

**CITY OF NEWARK  
DELAWARE  
PLANNING COMMISSION  
MEETING**

**March 3, 2009**

**7:30 p.m.**

Present at the 7:30 p.m. meeting were:

**Chairman:** James Bowman

**Commissioners Present:** Ralph Begleiter  
Peggy Brown  
Angela Dressel  
Mary Lou McDowell  
Rob Osborne  
Kass Sheedy

**Staff Present:** Roy H. Lopata, Planning and Development Director

Chairman James Bowman called the Planning Commission meeting to order at 7:30 p.m.

Mr. Bowman: Roy, you have a matter to bring before the Commission.

Mr. Roy Lopata: I have a brief procedural matter that we have discussed briefly. I thought it might make sense for the Commission to consider moving its starting time to 7:00 p.m. Several of our City committees meet at 7:00 p.m. If it is the Commission's pleasure, I think you should do it by motion; you can authorize your next meeting to start at 7:00 p.m. If it turns out not to work and you feel in a few months that you are too rushed, we can always go back to 7:30 p.m.

Mr. Bowman: The Chair will entertain a motion to change our starting time to 7:00 p.m.

**MOTION BY SHEEDY, SECONDED BY DRESSSEL TO REVISE THE STARTING TIME OF THE PLANNING COMMISSION MEETINGS TO 7:00 P.M.**

**VOTE: 7-0**

**AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDowell, OSBORNE, SHEEDY**

**NAY: NONE**

**MOTION UNANIMOUSLY APPROVED**

**1. THE MINUTES OF THE FEBRUARY 3, 2009 PLANNING COMMISSION MEETING.**

**MOTION BY BEGLEITER, SECONDED BY OSBORNE THAT THE MINUTES OF THE FEBRUARY 3, 2009 PLANNING COMMISSION MEETING BE APPROVED AS RECEIVED.**

**VOTE: 7-0**

**AYE: BEGLEITER, BOWMAN, BROWN, DRESEL, McDowell, OSBORNE, SHEEDY**

**NAY: NONE**

MOTION PASSED UNANIMOUSLY

**2. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE DELETING THE APARTMENT USE CATEGORY IN THE BLR (BUSINESS LIMITED RESIDENTIAL) ZONE AND REDUCING THE MINIMUM LOT AREA REQUIREMENT FOR APARTMENTS IN THE RM (MULTI-FAMILY DWELLINGS – GARDEN APARTMENTS) ZONE.**

Mr. Bowman: We do need a motion to remove this from the table since it was tabled at the last meeting.

MOTION BY DRESSEL, SECONDED BY BEGLETIER THAT THE REVIEW AND CONSIDERATION OF AMENDMENTS TO THE BLR AND RM ZONES IN THE ZONING CODE BE REMOVED FROM THE TABLE FOR REVIEW BY THE PLANNING COMMISSION.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDowell, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“Background

Following its February 3, 2009 public hearing, the Planning Commission tabled consideration of BLR mixed use zoning district amendments that would eliminate apartments as a stand-alone permitted use. While the Commission seemed inclined to agree with the proposal, the Commissioners suggested that the Planning and Development Department also provide companion recommendations that would reduce the minimum lot area from one to one-half acre in the RM district. The goal of both sets of changes would be to foster mixed use development in the BLR zone – the district’s clear intent -- and to direct apartment or similar small lot residential development to the RM district.

The Commission should note, in this regard, that experts in “Smart Growth,” or “New Urbanism,” emphasize the importance of establishing mixed use zoning districts and suggest that such districts should be concentrated in downtowns or in residential neighborhoods within walking distance or in relatively close proximity to central business districts. In Newark’s case, as we discussed at the Commission February 3, 2009 meeting, our BB district has for many decades permitted downtown mixed uses, and our BLR district, if used appropriately, should function as the “nearby” transitional zone for mixed use development.

As described in the January 23, 2009 report to the Planning Commission, the Planning and Development Department and the Commission over the recent past have reviewed amendments to the BLR zone intended to meet the goal of the district to serve as a transitional and mixed development zone for apartment and limited (that is, non-food) commercial uses. Beyond that, these changes were also designed to reduce the relatively high residential density then permitted in the BLR zone. As a result, on September 11 and October 23, 2006, Council approved Zoning Code amendments that, among other things, reduced the permitted lot coverage and increased the minimum lot area for apartments in the BLR district.

As also noted previously, while these changes have had the desired impact of reducing the density of apartment-type projects in the BLR zone, developers have continued to utilize the zone for free standing residential developments. In other words, mixed use projects – calling for business and residential uses – are not being proposed for

land zoned or requested to be rezoned BLR. In the meantime, the City adopted a fully revised and updated Newark Comprehensive Development Plan IV that underscored the goal of more carefully evaluating residential projects downtown (and elsewhere in the City), in terms of impacts on neighboring properties and to encourage owner occupancy.

Regarding a related issue that also arose during the Commission's February 3, 2009 discussion, please note that currently 18.9015 acres of land in Newark are zoned BLR, with 17.8995 acres within the zone developed or approved for development.

In any case, the Planning and Development Department continues to believe that the City should consider additional BLR zoning district amendments to limit the use of the district to mixed use and transitional zone projects and, similarly, in order to continue to permit small apartment projects on relatively small parcels, the City should also consider reducing the RM minimum lot area requirement from one to one-half area. Please note that because BLR remains a "business" zone, we believe that other minor area regulations differences between these districts should not be changed.

One other issue discussed briefly at the Commission's February 3, 2009 meeting – the concern that the apartment/non-residential category did not provide a clear stipulation as the extent of the non-residential use required – has also been reconsidered and a Code amendment suggested.

The Department's suggestions for the Planning Commission's consideration concerning all of these matters appear below:

#### Existing Regulations

##### BLR Permitted Uses

The BLR zone currently permits the following:

- A. Churches or places of worship
- B. Schools
- C. Parks and Playgrounds
- D. Municipal utilities uses
- E. Public transportation bus or transit stops
- F. Social club, fraternal, social service, union and civic organizations
- G. Accessory uses
- H. Hospital
- I. Apartments in conjunction with any nonresidential uses permitted in the district
- J. Offices for professional services and administrative activities
- K. Undertakers
- L. Barber shops and beauty parlors
- M. Personal service establishments
- N. Specialty retail stores with a maximum floor area limited to 5,000 square feet [Non-food]
- O. Finance Institutions, banks, loan companies
- P. Six apartment units in any single detached or semi-detached residential building
- Q. Bed and breakfast, with special requirements

BLR zoning also permits, with a Council granted Special Use Permit, the following:

- A. Police and fire stations, library, museum and art gallery
- B. Golf courses and country clubs
- C. Electrical and gas substations
- D. Day care centers
- E. Drive-in or curb service for other than eating establishments

##### Key BLR Area Requirements

Lot Area	One-Half Acre
Density	16 Units Per Acre
Lot Coverage	25%
Height	3 Stories
Setback	20 Feet
Rear Yard	25 Feet
Side Yards	10 Foot Minimum/25 Foot Aggregate
Open Area	40%

RM Permitted Uses

RM permits a variety of residential uses including garden apartments and row homes.

Key RM Area Requirements

Lot Area	One Acre
Density	16 Units Per Acre
Lot Coverage	20%
Height	3 Stories
Setback	30 Feet
Rear Yard	25 Feet
Side Yards	20 Feet
Open Area	40%

Proposed BLR Amendments

To ensure that future residential projects in this district are coupled with non-residential uses, the Planning and Development Department suggests the following Zoning Code amendments for the Planning Commission’s review and consideration. Please note that the first amendment proposed below meets the goal suggested here of eliminating apartments as a stand-alone use in BLR and, the second, clarifies the extent of the non-residential use to be required in a mixed use project. The other amendments are related editorial changes.

Amendment 1:

Delete Zoning Code Section 32-16.1(a)(20) which reads as follows:

“Six apartment units in any single detached or semi-detached residential building.”

Amendment 2:

Delete Zoning Code Section 32-16.1(a) (12) which read as follows:

“Apartments are permitted in conjunction with any nonresidential uses permitted in this district. Such nonresidential uses are permitted on ground floor and second floor only in residential buildings.”

And replace it with the following:

“Apartments are permitted in conjunction with any nonresidential uses permitted in this district. Nonresidential uses are permitted on ground floor and second floor only in such mixed use buildings and permitted nonresidential uses shall occupy a minimum of 20 percent of the gross floor area of each building.”

Amendment 3:

Amend Zoning Code Section 32-16.1(d)(1) *Minimum lot area*, which reads in part as follows:

“ . . . except for apartments or apartments in conjunction with nonresidential uses, the minimum lot area shall be one half acre, with a maximum number of dwelling units per gross acre not to exceed 16.”

By deleting the words, “apartments or,” so that the subsection reads as follows:

“ . . . except for apartments in conjunction with nonresidential uses, the minimum lot area shall be one half acre with a maximum number of dwelling units per gross acre not to exceed 16.”

Amendment 4:

Amend Zoning Code Section 32-16.1(d) (2) *Maximum lot coverage*, which reads in part as follows:

“ . . . and except for apartments for which the maximum lot coverage shall be 25%.”

By inserting the words: “in conjunction with nonresidential uses,” after the word, “apartments,” so that the subsection reads:

“ . . . and except for apartments in conjunction with nonresidential uses, for which the maximum lot coverage shall be 25%.”

Amendment 5:

Amend Zoning Code Section 32-16.1(d) (6), *Rear yards*, which reads in part as follows:

“ . . . except for apartments for which a rear yard of 25 feet, but in no case less than one half the height of the building, shall be provided on every lot.”

By adding the words, “in conjunction with nonresidential uses,” after the word, “apartments,” so that the subsection reads:

“ . . . except for apartments in conjunction with nonresidential uses, for which a rear yard of 25 feet, but in no case less than one half the height of the building, shall be provided on every lot.”

Amendment 6:

Amend Zoning Code Section 32-16.1(d) (8) *Open area*, which reads as follows:

“At least 35% of the lot area shall be devoted to open area; except for apartments, where at least 40% shall be devoted to open area,”

By adding the words, “in conjunction with nonresidential uses,” after the word, “apartments,” so the subsection reads:

“At least 35% of the lot area shall be devoted to open area, except for apartments in conjunction with nonresidential uses, where at least 40% shall be devoted to open area.”

Proposed RM Amendments

Amendment 1:

Amend Zoning Code Section 32-11(a) (1) h, by deleting the words, “One acre,” and replacing them with the words, “One-half acre,” so that the subsection reads as follows:

“Minimum lot size. One-half acre.”

Amendment 2:

Amend Zoning Code 32-11(c) (1), *Minimum lot area*, which reads in part as follows:

“ . . . the minimum lot area shall be one acre with 2,725 square feet per family for garden apartments . . . ”

By replacing the words, “one acre,” with “one-half acre,” so that the subsection reads:

“ . . . the minimum lot area shall be one-half acre with 2,725 square feet per family for garden apartments . . . ”

#### Recommendation

The Planning and Development Department suggests that the Planning Commission review this report, receive public input, and then **recommend that City Council approve the proposed Zoning Code amendments regarding the BLR and RM districts proposed above.**”.

Mr. Bowman: Are there any questions from the members of the Commission?

Ms. Peggy Brown: How did you arrive at 20%?

Mr. Lopata: I first thought that in the BLR zone, typically, the multi-use buildings would be three stories. So, one could say that the commercial should be all of the first floor and that would be 33% in gross floor area of the building. But I believe that is a bit too much to require, since the intent is to have a threshold below which the commercial portion of the mixed use cannot go. I decided, therefore that perhaps about 1/5<sup>th</sup> of the building (20 per cent) would make sense and I used that criteria. By-the-way, I looked at some other codes and couldn't find any that had any kind of numbers so I came up with it myself.

Mr. Bowman: I have one written request to speak from Mr. Prettyman.

Mr. Hal Prettyman: 10 Wedgewood Road, Newark, Delaware. I'm still opposed to any change to BLR. This is a zone that right now there is not one piece of property in the City that can be developed without Council's approval. It is not like we have a lot of BLR zoning around here and we need to do something about it. The last two projects that Council did approve were approved BLR zoning and the vote (you can correct me if I am wrong) was 7-0.

The only other comment I would like to make is that the 20% requirement really defeats the purpose of BLR being a transitional zoning because, currently, BLR could be all commercial if you had a use for it in BLR.

Mr. Lopata: This doesn't require that you have residential. This requirement would be in a mixed use building and at least 20% would be commercial. You could, of course, have all commercial.

Mr. Prettyman: Right, but where you would find some uses for BLR, you might not have any call for a commercial use at this time. That doesn't mean that five years from now it might not change and doctor's offices would end up going on North Street.

Mr. Lopata: That is kind of the point.

Mr. Prettyman: With this, if you developed it you would have to have 20% of the building. In this current economy with vacancies occurring all around, I just find this to put a requirement of 20% in BLR when office space – here in a little bit we will have Mr. Lang up here and we can see how he is doing with leasing his properties out. It is a very difficult market and I think that is a big requirement to put on it.

Kevin Heitzenroder: 271 Beverly Road. I know I was here a month ago and I thought it was prudent to show up again this month, and I appreciate the Planning Department taking our comments last month and at least reducing the overall acreage. I think that is a huge step forward concerning what is before you tonight. I think the biggest concern I have is the setback requirements are drastically different from BLR to RM. The front setback, for instance, goes from 20 ft. to 30 ft., the lot coverage goes from 25% to 20%, and the aggregate sideyard must be 40 ft. From one viewpoint that might be an added benefit to the City that you get more green space, but when we take these smaller nonconforming odd dimension lots and you take 40 ft. of a side yard, the developable area does become substantially less. I think that that still makes the case that in BLR, piggybacking Hal's comments, there are no current parcels of land in the City that could possibly be developed before without coming before the Planning Commission approval and Council's approval. Needing a rezoning in order to develop them, I think that that is a very important point. So, I will leave my comments at that and I do appreciate the acreage being reduced.

Mrs. Jean White: 103 Radcliffe Drive. A quick comment, I never realized all the time that BLR projects came that it meant that businesses could still go in there. I thought that when you put the townhouse apartments that that was strictly residential. I don't know what type of businesses they would be like barber shops or whatever.

For a long time I have felt, and I have voiced my opinion many times, particularly the last seven times. There have been projects recently that have come from BLR, but I felt that it was being misused to get around certain other restrictions, the very ones we might talk about like setbacks, side yards and lot coverage, and so on. The problem, of course, with BLR even so with a relatively small half acre is that, when you look at this, you think, oh well, BLR has a setback of 20 feet, as was just mentioned, and RM has 30 feet. But, in fact, we have several projects – a good example might be North Street Commons – which used site plan approval instead of even having that 20 feet has a 10 foot setback. So, to pack in more units – that is my view of it as a towns person – even those requirements have been gotten around at certain times. I couldn't feel that North Street Commons, for example, that the setback is much too little.

By itself the ordinance having to do with the BLR changes that are before you, I support them. I have been complaining for a long time and I think that they are good changes.

As far as giving your minimum amount for the retail, I also think it is good also to specify it. That was a point that I had brought up at the last meeting. I personally feel that it should be increased from 20% to 25%. I was thinking that not all buildings might be three stories. So, you might have a two story. Let's just take for example of five units on the first floor and five units on the second. So, 20% would be two of those five on the first floor. There might not actually work out to equal units but using it to talk about it this way. Only two of the five on the first floor would have some commercial use. The other three plus the five on the top would be apartments. If you had 50% that would be all five on the first floor. If you had a three-story building which you had the same five on each of the three floors, 20% would be three out of the 15. I think that is still a pretty small amount and I think 25% would be better.

The second issue before you, which was separate and is the reason why everybody is coming back today, is to reduce the minimum area for RM from one acre to .5 acres. I must say, I totally oppose this. I think to do this will cause problems. Well, as a previous speaker tonight said, even though a half acre of RM might be appreciated, there still could be constraints that developers don't like because of the RM setbacks, the RM lot coverage, and so on. Instead, what you are going to see, again, in order to get the units - and you could get those 16 units per acre if you had the whole acre. For townhouses it is harder to get them than apartments where you stack. It is easier to get it for two acres, which is no longer the case.

So, for those reasons and the fact that there are areas in the town as developers acquire properties next to each other they won't be able to go, once they have them and it is already zoned RM, they have the right to develop what they want. I oppose that and, therefore, I have a dilemma. I am very, very much for the BLR changes that the Planning

and Development Department has done. But, on the other hand, I am very much against changing the RM to a half acre. So, I have this dynamic tension between something I feel very strongly about and have spoken at many other meetings. . .

I must say I think that Mr. Prettyman makes a compelling argument that will the BLR the developer does not have the right to do what they want and they have to present their project for Council review and Council has the right to disapprove it or to require things that otherwise the developer could just do.

Anyway, the end result, in spite of my feelings of liking what is proposed for the BLR, is to oppose it and keep it the same and also to keep the RM lot minimum at one acre.

Mr. Bowman: Are there any other Planning Commission questions?

Mr. Begleiter: Can I ask Roy to comment, please, on the issue that Mr. Prettyman raised, the business about comparing the RM properties to BLR area requirements.

Mr. Lopata: That is the issue here. BLR has been used exclusively to build apartments. That is the reason we started this discussion. The real reason it has been used for apartments is this zone allows a relatively small lot size and it has slightly less stringent lot area requirements. What is the argument we are hearing? We are hearing the same argument we heard last time. Aside from Mrs. White's comments, from the developer's standpoint: let's leave BLR alone because it is a great little district that we can use and we can use for troubled or problem properties, as Hal called them, and rezone them to BLR and, therefore, we can develop them for housing in a way we otherwise couldn't.

My understanding of the sense of the Planning Commission at the last meeting -- but people's minds change, and that is okay, too, -- several members of Council, and members of the community -- was that BLR was not being used the way it was intended. The reason for that is for the reasons you just heard. The gentlemen from the development community are telling you, leave it alone, utilize it, we want to keep using it in this way. That is a policy decision ultimately. I am responding to the sense that I am getting that people have, and including me, -- wait a minute, if this is supposed to be a mixed use zone wouldn't it be nice if for once it was actually used the way it was intended?

I didn't propose the RM requirement. That came out of the discussion of the Commission. It was your sense that let's at least balance this so we really make RM more of a "carrot" that people in the development community would say, okay, we can put apartments in that zone.

Mr. Begleiter: Roy, can I ask one more question? This is kind of a factual thing that I don't understand. On page 2 of your report, the second paragraph that starts with "Regarding a related issue . . ." do I understand that paragraph correctly to indicate that essentially this discussion is entirely around a total of less than one acre of land in Newark that would be affected by the change?

Mr. Lopata: Currently. Most of the BLR projects are rezonings.

Mr. Begleiter: One final thing, Roy. This is just really a technical thing. In the next paragraph, three lines up from the bottom. I am only mentioning this in case this gets incorporated into something else. The word should be acre.

Mr. Bowman: I think I made the comment last time that this zoning is really residential limited business not business limited residential. Let's call it what it is. Hearing no other comments, the Chair will entertain a motion on the amendments to the Zoning Code as set forth by the Planning and Development Office.

MOTION BY BEGLEITER, SECONDED BY DRESSSEL THAT THE PLANNING COMMISSION RECOMMEND THAT COUNCIL AMEND THE BLR AND RM ZONING DISTRICTS AS FOLLOWS:

**A. BLR AMENDMENTS**



AMENDMENT 1:

DELETE ZONING CODE SECTION 32-16.1(a)(20) WHICH READS AS FOLLOWS:

“SIX APARTMENT UNITS IN ANY SINGLE DETACHED OR SEMI-DETACHED RESIDENTIAL BUILDING.”

AMENDMENT 2:

DELETE ZONING CODE SECTION 32-16.1(a) (12) WHICH READ AS FOLLOWS:

“APARTMENTS ARE PERMITTED IN CONJUNCTION WITH ANY NONRESIDENTIAL USES PERMITTED IN THIS DISTRICT. SUCH NONRESIDENTIAL USES ARE PERMITTED ON GROUND FLOOR AND SECOND FLOOR ONLY IN RESIDENTIAL BUILDINGS.”

AND REPLACE IT WITH THE FOLLOWING:

“APARTMENTS ARE PERMITTED IN CONJUNCTION WITH ANY NONRESIDENTIAL USES PERMITTED IN THIS DISTRICT. NONRESIDENTIAL USES ARE PERMITTED ON GROUND FLOOR AND SECOND FLOOR ONLY IN SUCH MIXED USE BUILDINGS AND PERMITTED NONRESIDENTIAL USES SHALL OCCUPY A MINIMUM OF 20 PERCENT OF THE GROSS FLOOR AREA OF EACH BUILDING.”

AMENDMENT 3:

AMEND ZONING CODE SECTION 32-16.1(d)(1) *MINIMUM LOT AREA*, WHICH READS IN PART AS FOLLOWS:

“ . . . EXCEPT FOR APARTMENTS OR APARTMENTS IN CONJUNCTION WITH NONRESIDENTIAL USES, THE MINIMUM LOT AREA SHALL BE ONE HALF ACRE, WITH A MAXIMUM NUMBER OF DWELLING UNITS PER GROSS ACRE NOT TO EXCEED 16.”

BY DELETING THE WORDS, “APARTMENTS OR,” SO THAT THE SUBSECTION READS AS FOLLOWS:

“ . . . EXCEPT FOR APARTMENTS IN CONJUNCTION WITH NON-RESIDENTIAL USES, THE MINIMUM LOT AREA SHALL BE ONE HALF ACRE WITH A MAXIMUM NUMBER OF DWELLING UNITS PER GROSS ACRE NOT TO EXCEED 16.”

AMENDMENT 4:

AMEND ZONING CODE SECTION 32-16.1(d) (2) *MAXIMUM LOT COVERAGE*, WHICH READS IN PART AS FOLLOWS:

“ . . . AND EXCEPT FOR APARTMENTS FOR WHICH THE MAXIMUM LOT COVERAGE SHALL BE 25%.”

BY INSERTING THE WORDS: “IN CONJUNCTION WITH NONRESIDENTIAL USES,” AFTER THE WORD, “APARTMENTS,” SO THAT THE SUBSECTION READS:

“ . . . AND EXCEPT FOR APARTMENTS IN CONJUNCTION WITH NON-RESIDENTIAL USES, FOR WHICH THE MAXIMUM LOT COVERAGE SHALL BE 25%.”

AMENDMENT 5:

AMEND ZONING CODE SECTION 32-16.1(d) (6), *REAR YARDS*, WHICH READS IN PART AS FOLLOWS:

“ . . . EXCEPT FOR APARTMENTS FOR WHICH A REAR YARD OF 25 FT., BUT IN NO CASE LESS THAN ONE HALF THE HEIGHT OF THE BUILDING, SHALL BE PROVIDED ON EVERY LOT.”

BY ADDING THE WORDS, “IN CONJUNCTION WITH NONRESIDENTIAL USES,” AFTER THE WORD, “APARTMENTS,” SO THAT THE SUBSECTION READS:

“ . . . EXCEPT FOR APARTMENTS IN CONJUNCTION WITH NON-RESIDENTIAL USES, FOR WHICH A REAR YARD OF 25 FEET, BUT IN NO CASE LESS THAN ONE HALF THE HEIGHT OF THE BUILDING, SHALL BE PROVIDED ON EVERY LOT.”

AMENDMENT 6:

AMEND ZONING CODE SECTION 32-16.1(d) (8) *OPEN AREA*, WHICH READS AS FOLLOWS:

“AT LEAST 35% OF THE LOT AREA SHALL BE DEVOTED TO OPEN AREA; EXCEPT FOR APARTMENTS, WHERE AT LEAST 40% SHALL BE DEVOTED TO OPEN AREA,”

BY ADDING THE WORDS, “IN CONJUNCTION WITH NONRESIDENTIAL USES,” AFTER THE WORD, “APARTMENTS,” SO THE SUBSECTION READS:

“AT LEAST 35% OF THE LOT AREA SHALL BE DEVOTED TO OPEN AREA, EXCEPT FOR APARTMENTS IN CONJUNCTION WITH NONRESIDENTIAL USES, WHERE AT LEAST 40% SHALL BE DEVOTED TO OPEN AREA.”

**B. RM AMENDMENTS**

AMENDMENT 1:

AMEND ZONING CODE SECTION 32-11(a) (1) h, BY DELETING THE WORDS, “ONE ACRE,” AND REPLACING THEM WITH THE WORDS, “ONE-HALF ACRE,” SO THAT THE SUBSECTION READS AS FOLLOWS:

“MINIMUM LOT SIZE. ONE-HALF ACRE.”

AMENDMENT 2:

AMEND ZONING CODE 32-11(c) (1), *MINIMUM LOT AREA*, WHICH READS IN PART AS FOLLOWS:

“ . . . THE MINIMUM LOT AREA SHALL BE ONE ACRE WITH 2,725 SQUARE FEET PER FAMILY FOR GARDEN APARTMENTS . . . ”

BY REPLACING THE WORDS, “ONE ACRE,” WITH “ONE-HALF ACRE,” SO THAT THE SUBSECTION READS:

“ . . . THE MINIMUM LOT AREA SHALL BE ONE-HALF ACRE WITH 2,725 SQUARE FEET PER FAMILY FOR GARDEN APARTMENTS . . . ”

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE, SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

**3. REVIEW AND CONSIDERATION OF THE MAJOR SUBDIVISION, SPECIAL USE PERMIT FOR APARTMENTS AND A PARKING WAIVER FOR THE PROPERTY AT 108 E. MAIN STREET AND THE ADJOINING PROPERTY AT 17 CENTER STREET.**

Mr. Lopata summarized his report to the Planning Commission which reads as follows:

“On December 23, 2008, the Planning and Development Department received an application from 104 East Main Street LLC for the major subdivision, special use permit and a parking waiver for the property at 108 E. Main Street. The applicants are requesting development approval in order to renovate the existing building and front façade, to add a second floor devoted to commercial space, and to add a third floor with ten apartment units.

This application follows a long sequence of applications beginning in 1998 for the redevelopment of this property (the old CVS site) that culminated in the most significant review in 2004-2005 resulting in City Council not approving a 15 upper floor apartment plan for the property. At that time, the Planning Commission recommended in favor of a ten unit project, which also appeared to have Council support. A subsequent law suit by the previous applicants resulted in a 2007 Delaware Supreme Court decision affirming, among other things, the City’s right to deny approval in this instance.

Please see the attached Landmark Engineering subdivision plan, applicant’s supporting letter, and building elevation drawings.

The Planning Department’s Report on this 108 E. Main Street major subdivision follows:

**Property Description and Related Data:**

1. Location:

North side of E. Main Street, approximately 92 feet from the E. Main and Center Streets intersection.

2. Size:

.68 acres

3. Existing Land Use:

One story, 15,088 square foot building with the vacant old CVS Pharmacy location in the front part of the facility and the Mid-Atlantic Ballet Academy to the rear. The central segment of the building contains a small approximately 30 foot long two story section. The northern portion of the site is currently leased to the City as part of Parking Lot #3. A small single family rental home is located on the portion of the property directly adjoining Center Street.

4. Physical Condition of the Site:

The 108 E. Main Street property is a developed site containing an existing one-story approximately 15,000 square foot building and surface parking lot. A small single family type home is located at the portion of the site fronting on Center Street.

In terms of topography, the site is relatively level with a slight slope from north to south to E. Main Street.

Regarding soils, according to the United States Department of Agriculture's Natural Resources Conservation Service, the 108 E. Main Street site consists of Matapeake Sassafras Urban Land Complex soil. The Natural Resources Conservation Service indicates that this is a disturbed soil that has been used for development purposes; no development limitations for the use proposed are indicated.

5. Planning and Zoning:

108 E. Main Street is zoned BB. BB zoning permits the following:

- A. Retail and specialty stores
- B. Retail food stores up to 5,000 square feet in maximum floor area, with special conditions
- C. Restaurants, bakery and delicatessens
- D. Banks and finance institutions
- E. Offices for professional services and administrative activities
- F. Personal service establishments
- G. Studios for artists, designers, photographers, musicians, and sculptors
- H. Repair and servicing, indoor and off-site.
- I. Related indoor storage facilities as accessory uses with special requirements
- J. Accessory uses and accessory buildings
- K. Public parking garage and parking lot
- L. Public transit facilities
- M. Social club, fraternal, social service, union and civic organizations, except on ground floor locations
- N. Photo developing and finishing

BB also permits, with a Council granted Special Use Permit, the following:

- A. Retail food stores with more than 5,000 square feet in area
- B. Drive-in and curbside service for other than eating establishments
- C. Fast-food restaurants with special requirements
- D. Motels and hotels
- E. Commercial in-door recreation and in-door theaters
- F. Instructional, business or trade schools
- G. Electric gas and telephone central offices and telephone central offices and substations with special requirements
- H. Tower, broadcasting or telecommunications on existing buildings or structures with special requirements
- I. Police and fire stations
- J. Library, museum and art gallery
- K. Church or other place of worship
- L. Restaurant, cafeteria style
- M. Apartments, except on ground floor locations, with special requirements
- N. Restaurants with alcoholic beverages, with special requirements

The small parcel on the eastern portion of the site fronting on Center Street is zoned RS. RS is a single family zone that permits, in general, single family detached dwellings and related uses.

Regarding BB zoning area requirements, other than off-street parking for the proposed changes, the 108 E. Main Street subdivision plan meets all applicable Zoning Code requirements. Based on the applicant's submittal, the 108 E. Main Street plan would normally require 64 additional off-street spaces. Because the land containing the existing and new parking on the site is to be transferred to the City for public use in Parking Lot #3, this project requires a 100 percent parking waiver.

Regarding nearby properties, the 108 E. Main Street site is adjacent on the west to BB zoned properties, including the recently approved mixed use commercial and residential 102 E. Main Street parcel. The BB zoned United States Post Office is adjacent to the property on the east along E. Main Street. Several RS (single family, detached) zoned single family type rental dwellings are located north and east of the site on Center Street. The UN zoned University of Delaware tennis courts are north of the portion of the property leased to the City for Parking Lot #3. The UN zoned Academy Building lawn, University of Delaware offices in the Academy Building and the BB zoned Washington House mixed use commercial and residential project are all located south of the site across E. Main Street.

Regarding comprehensive planning, the Newark Comprehensive Plan calls for “commercial (pedestrian oriented)” uses at the 108 E. Main Street location. In addition, the Plan’s Downtown Economic Enhancement Strategy suggests, “downtown core districts” land uses for this site. The Strategy describes this district as:

“ . . . an area to be redeveloped with first floor specialty and traditional retail shops, with a balanced concentration of food and entertainment. Apartments and offices are proposed for upper floors. Any additional apartments, however, must be carefully and closely evaluated in terms of their impact on downtown traffic and parking; their compatibility with existing downtown buildings in terms of design, scale and intensity of development; the contribution of the overall project, including proposed apartments, to the quality of the downtown economic environment; and potential significant negative impacts on nearby established businesses and residential neighborhoods. Beyond that and particularly to encourage owner occupancy downtown, the City may consider reducing the permitted downtown density in the projects in this District for residential projects.”

Regarding gross residential site density, please note that the 108 E. Main Street major subdivision, parking waiver and special use permit plan calls for 14.7 dwelling units per acre. By way of comparison, the density of the adjoining 102 E. Main Street project is 20.83 units per acre and the Washington House’s density is 36.1 units per acre.

### **BB District Off-Street Parking and Option Procedure**

The BB district off-street parking waiver program, adopted by the City to encourage quality pedestrian oriented development downtown stipulates that the Planning Commission can reduce or waive the off-street parking standards in Zoning Code Section 32-45(a) after considering the following:

- “A. Whether the applicant has demonstrated the proposed use does not conflict with the purposes of the Comprehensive Development Plan of the City;
- B. Whether the applicant has demonstrated that the proposed use conforms to and is in harmony with the character of the development pattern of the central business district;
- C. Whether the applicant has demonstrated that the proposed use is not highway oriented in character or significantly dependent on automobile or truck traffic as a primary means of conducting business;
- D. That the proposed use will not adversely affect the health or safety of persons residing or working in the vicinity, will be detrimental to the public welfare, or injurious to property improvements in the vicinity;

- E. The Planning Commission may also consider the availability of off-street parking facilities, the availability of nearby adjacent public parking facilities (within 500 feet) that may be shared by the applicant and an existing or proposed use. In considering this subsection the Planning Commission may require that the applicant submit an appropriate deed restriction, satisfactory to the City, that ensures either the continued validation of and/or the continued use of shared parking spaces in connection with the uses and structures they serve;
- F. The Planning Commission shall consider the advice and recommendation of the Planning Director.”

Please note also that the BB zoning parking waiver procedure permits City Council to review, modify, or deny Planning Commission approval, disapproval, or approval with conditions upon the recommendation of the Planning Director and/or the City Manager.

Also regarding the requested parking waiver, our procedure specifies that applicants receiving such approvals must make a “payment in lieu of spaces” to the City used to improve parking downtown. The required payment, based on a recently updated estimate of the cost of construction of surface level parking spaces provided by the Public Works Department (\$5,833) is as follows:

<u>Number of Spaces</u>	<u>Payment Required</u>
Five (5)	\$ 1,458.25 (5% of cost)
Six to twenty-five (25)	\$ 72,912.50 (50% of cost)
Each Space Over 25 (34)	<u>\$198,322.00</u> (100% of cost)
<b>TOTAL:</b>	<b>\$272,692.75</b>

Comments regarding this “payment in lieu of spaces” and related comments regarding this issue appear below under Subdivision Advisory Committee.

**Status of the Site Design**

Please note that at this stage in the Newark subdivision and review process for projects fronting on Main Street, applicants are required to show the general site design and architectural character of the project. For the site design, specific details taking into account topographical and other project features, must be included in the construction improvement plan. For architectural character, the applicants must submit at the subdivision plan stage of the process color scale elevations of all proposed buildings, showing the kind, color and texture of materials to be used, proposed signs, lighting and related exterior features; and, in addition, contextual color scale elevations showing the front Main Street facades of all buildings immediately adjacent to the property. If the construction improvement plan, which is reviewed and approved by the operating departments, does not conform substantially to the approved subdivision site and architectural plan, the construction improvement plan must be referred back to City Council for further review and approval. That is, initial Council subdivision plan approval means that the general site concept and the more specific architectural design has received City endorsement, with the developer left with some limited flexibility in working out the details of the plan -- within Code determined and approved subdivision parameters, to respond in a limited way to changing needs and circumstances. This does not mean, however, that the Planning Commission cannot make site design or related recommendations that City Council could include in the subdivision plan and agreement for the project.

Be that as it may, as you can see from the 108 E. Main Street development plan, supporting letter, and applicant’s color building elevation drawings, the proposal calls for the full renovation of the existing one story building and front façade with the addition of a second floor for commercial use, and a third floor devoted to ten apartments. The approximately 15,000 sq. ft. footprint of the building will not change. The proposed new

brick façade fronting on Main Street, also includes a small patio area allowing for outdoor dining for a possible restaurant tenant.

The plan and cover letter also refer to a proposed walkway between the 102 and 108 E. Main Street projects providing access to the rear of both buildings and the City's Parking Lot #3.

The portion of this "L shaped" site fronting on Center Street includes a small 1½-story residential dwelling that will be removed and replaced with additional parking and an access way for the parking area to be aligned with the existing entrance/exit to Parking Lot #4 on the east side of Center Street. The portion of the site currently leased to the City and utilized for a portion of Parking Lot #3, to the rear of the building, and the new Center Street parking and access way will be conveyed to the City.

The applicants indicate in their cover letter that they will be working with Mid-Atlantic Ballet – currently a tenant in the rear portion of the first floor of the existing building – to continue the Ballet's occupancy of the site. The applicant's letter notes that some of the second floor commercial space also may be made available to Mid-Atlantic Ballet.

To evaluate the proposed architectural design, the Planning Commission may wish to consult the design review criteria in Municipal Code Chapter 27, Subdivision and Development Regulations, Appendix XIII (d).

Please note, in this regard, that on a voluntary basis, the applicant reviewed the proposed building elevation drawings with the Downtown Newark Partnership's Design Review Committee and the Committee indicated that the plan meets the recently updated Design Guidelines for Downtown Newark. Committee Chairman Joe Charma, the design engineer for this project, of course, abstained from consideration of this project.

### **Subdivision Advisory Committee**

The City's Subdivision Advisory Committee – consisting of the Management, Planning and Operating Departments – has reviewed the 108 E. Main Street major subdivision plan and has the comments provided below. Where appropriate, the subdivision plan should be revised prior to its review by City Council. The Subdivision Advisory Committee comments are as follows:

1. The Planning Department believes that the proposed mixed commercial and residential use at the site, coupled with the applicant's land dedication of existing and proposed parking, corresponds directly to the land use guidelines for downtown redevelopment in this location on Main Street in Comprehensive Development Plan IV. The residential component of the project also now follows the previous density recommendations of the Planning Department and Commission for the site. Moreover, the proposed new Center Street access way to Parking Lot # 3, to be constructed by the applicant, meets a key long term goal of the Planning Department, the Parking Committee and the Downtown Newark Partnership Board to provide improved access to our largest and most inaccessible municipal lot. In addition, the alignment with Lot #4's Center Street access improves mobility between the lots and assists "way finding" downtown.
2. As a condition of approval, to limit the impact of the proposed apartments on downtown parking, the Planning Department suggests that, in the form of deed restrictions, each dwelling unit should be restricted to a maximum of four tenants and that tenants shall be informed in writing that no off-street parking monthly permits will be available at the 108 E. Main Street site for their use in Lot #3.
3. The Planning Department suggests in light of the applicant's proposal to dedicate to the City the portion of the site currently leased as part of City Parking Lot #3 and the adjoining parcel fronting on Center Street, that the normally required parking waiver fee be waived. Please note, in this regard, that Zoning Code section 32-45(b)(9) b. specifically indicates that as part of its review of parking

waiver fees the Planning Commission should consider, “land donations,” if any.

4. The Planning Department also suggests that the Planning Commission recommend as subdivision site design conditions:
  - a. The architectural design for the facades of the building shall be carried out on all new and renovated building elevations visible from public ways.
  - b. Storage areas, mechanical and all utility hardware shall be screened from view from all public ways and nearby properties in a manner consistent with the proposed and existing architectural design.
5. The Public Works Department indicates the following:
  - Through the construction improvement plan process, the applicant will be required to verify that the type of stormwater management proposed meets DNREC requirements. The Department has approved a request for a stormwater quantity waiver; stormwater quality will be addressed to the maximum extent feasible through the construction improvement plan process. The applicant should review these issues with the Department through the construction improvement plan process. In this regard, the subdivision agreement will need to specify maintenance responsibilities for the applicant’s maintenance of onsite stormwater management facilities.
  - The subdivision plan should be revised to show the distance along the western boundary of condominium area #3 (a portion of the land to be conveyed to the City).
  - As a result of the proposed location of the trash enclosure, two parking spaces will be eliminated. The parking calculation, therefore, needs to be revised to show the reduction of two spaces [please note, in this regard, that the parking waiver fee calculation above takes into account this reduction in parking spaces].
  - The Department suggests that, through the construction improvement plan process, the applicant work with the Planning and Development Department’s Parking Division regarding ticket dispenser and gate locations at the new Center Street access way,.
6. The Electric Department indicates the following:
  - Electric Service is available from an existing pole line along the rear of the property.
  - The applicant will need to review with the Electric Department, through the construction improvement plan process, pole relocation issues and requirements.
  - The developer will be required to pay \$13,000 towards the cost of a padmount transformer to be installed in the grass island behind the building; a fee of \$150 per meter for the apartment radio read meters and \$320 per meter for commercial radio read meters will also be required. In addition, the developer will be required to install bollards around this transformer and must supply and install a transition box, if needed.
  - The developer must install two 4” and one 2” PVC conduits with pull strings from the padmount transformer to the utility pole in the rear of the property.
7. The Building Department indicates the following:
  - The building must be renovated and expanded in accordance with the International Building Code.



- All new construction at this site will be required to be sprinkled.
  - To permit the installation of window openings on upper floors of the east wall of the building, this portion of the facility will need to be set back in accordance with the specifications of the International Building Code.
  - Through the building permit review process, the existing bearing and foundation walls must be evaluated to ascertain their ability to handle the increased loads of the new proposed upper floors.
  - The stockade fence currently located between the 102 and 108 E. Main Street projects will be required to be removed following the completion of the 108 E. Main Street project
  - The six inch private underground fire service will be approved based on calculations verifying its ability to maintain the required flow and pressure, through the construction improvement plan process.
8. The Police Department has indicated that the proposed new Parking Lot #3 configuration at 17 Center Street will be an “excellent opportunity” to resolve access issues to this parking facility. On the other hand, the Department notes concerns with potential increased traffic on Center Street.

### **Recommendation**

Because the proposed 108 E. Main Street project, with all the Subdivision Advisory Committee recommended conditions, will not have a negative impact on nearby and adjacent properties, because the project conforms to the recommendations in Comprehensive Development Plan IV, because the proposed use conforms to the development pattern in the nearby area, and because the proposed land dedication of the section of the site leased to the City and of the portion of the site on Center Street will help to improve our downtown parking, the Planning Department suggests **that the Planning Commission approve the 108 E. Main Street parking waiver, with the condition that Condominium area #3 and tax parcel 18-020.00.039 shown on the Landmark Engineering plan, dated December 18, 2008, be dedicated to the City upon issuance of the first certificate of occupancy at the site, and that the Commission make the following recommendations to City Council:**

- A. That City Council, with the conditions in this report, approve the 108 E. Main Street major subdivision plan, as shown on the Landmark Engineering plan, dated December 18, 2008.**
- B. That City Council, with the conditions in this report, approve the 108 E. Main Street special use permit for apartments in the BB district, as shown on the Landmark Engineering plan, dated December 18, 2008.”**

[Secretary’s Note: The developer, Planning Commissioners and public referred to visuals brought by the developer for his presentation to the Planning Commission].

Mr. Bowman: Are there any questions for Roy from the Planning Commission?

Ms. Brown: Parking, is this dedicated or deeded? Does the City actually own it?

Mr. Lopata: We will own it. We use the term dedicated or deeded interchangeably, but we will own it.

Ms. Brown: Exactly how many parking places do we gain?

Mr. Lopata: We gain eight new spaces and the spaces to the rear are already there. They are in the lot now.

Ms. Brown: So the whole area is going to be deeded.

Mr. Lopata: Everything in the area to the north of the building. We feel that when developers do a project like this downtown and they happen to have land that is part of our City parking lot, it provides a public benefit if they transfer that land to the City. These uses are conditional uses – the apartments – they are not uses as a matter of right. So, we think that is the kind of positive that makes this a good project, as the Comprehensive Plan asks you to evaluate. One of the ways it has a positive impact on the community is reduce the cost to the taxpayers for parking downtown.

Ms. Brown: Who uses the parking lot now?

Mr. Lopata: We study that all the time. That lot has some monthly parkers, most people that use the businesses there -- Wilmington Trust, Abbots, Bloom, Caffé Gelato, Grassroots, and so on.

Ms. Brown: My question is, is it residents using it or are people going to the businesses or is it students using to go to class?

Mr. Lopata: There are not that many students there. They use Lot #1 behind the Galleria.

Ms. Angela Dressel: On #7 on page 8 you say, “All new construction at this site will be required to be sprinkled.” I just want to confirm that that means the existing building as well because the whole thing has to be sprinkled.

Mr. Lopata: Yes, that’s required.

Ms. Kass Sheedy: Roy, on page #3 you talk about what the Comprehensive Plan calls for at the Main Street location. What does the Comprehensive Plan call for on the Center Street piece of this?

Mr. Lopata: It is part of that same area. It is included within this downtown district. That language is identical.

Mr. Bowman: We will turn it over to the applicant. Before you start Mr. Lang, I have something that I have to clear up. Strange as it may seem, apparently, someone in the community complained to their Councilman that they couldn’t trust the Planning Commission because the Chairman was an employee of Lang Development. I need to ask you to clarify. Am I under your employ in any way, shape or form?

Mr. Jeff Lang: No Sir.

Mr. Bowman: Have I ever applied to you for a job?

Mr. Lang: No Sir.

Mr. Bowman: Have I ever spoken with you outside these chambers about any project that is before Planning Commission or the Planning and Development Department?

Mr. Lang: Not that I can remember at all, Sir.

Mr. Bowman: That is good because I can’t remember any either. If I was under your employ, I can tell you that I would like a raise if at all possible. I am happily retired for the last almost seven years. We will forget that issue, but thank you for clarifying that. These things have a way of growing legs, if you know what I mean.

Mr. Lang: I understand. That is unfortunate, Sir.

Mr. Bowman: With that it is all yours.

Mr. Lang: 13 Spring Water Way. This evening Joe Charma is here, as you know,

Landmark who is our engineer on the project, Dan Hoffman our architect, and Chris Locke who does work with us at Lang Development Group at least for this next couple of months.

As you know, we recently completed the renovation and addition of the adjacent building 102 E. Main Street, and while we were working on that project we became very interested in the opportunity with this property and started talking with the property owners because we needed to obtain an easement for the benefit of our building as well as a potential benefit for their building between the alleyway between the two buildings. Part of the discussions evolved into a opportunity for us to put this property under agreement with the hope of obtaining approvals to do somewhat similar to what we did at 102 E. Main Street, a renovation and expansion of the building. Obviously, at 102 E. Main, we tore down the back of the building and added on to it because the building was in disrepair. This building, obviously, is a different animal to a large extent. It has a very functional first floor but has the opportunity to do some additional improvement on the upper floors, and the present owners sought approval for doing some different things with the upper floors of the building. We got under agreement with them with the thought of potentially adding a second floor, maybe even a third floor of residential units which is typical for a number of buildings that we have done downtown. Part of that discussion evolved into trying to look at a different opportunity and maybe doing a second floor of commercial space as well as a third floor of residential space to create a different opportunity for downtown businesses. We have had a small office user occupy a portion of the back of this building and recently there hasn't been as much demand for first floor retail space due to the difficulty of starting up a restaurant or other type of business is very capital intensive to get started. But, a lot of office users are looking for opportunities in and around town. So, we thought this could be a great situation. We also got together with the existing tenant who has representatives here. We have also started talking with Mid Atlantic Ballet's regarding their long term plan. We would obviously like to keep them in the building and, potentially, offer them some expansion opportunities within the building for their dance studio or even performances which would be a great additional cultural opportunity for the community.

Part of the design we started going through is how we make the building work scale wise. We starting looking at adjacent buildings with (inaudible) . . . As, Roy pointed out, we are going to seek a variance. The variance is really due to the use of the second floor of the building. From a typical perspective, your first floor retail is somewhere between 13 and and 15 ft. and your residential uses can use 10 ft. per floor. So, if you add 15, 10 and 10, you end up with 35 feet, just probably where our Zoning Code evolved from. When you put more commercial uses together floor-to-floor you are going to need 13 to 15 ft, 13 to 15 ft. and then another 10 ft. You will obviously exceed 35 feet unless you are going to end up renting office space where people are going to be hitting their head on their ceiling. I don't think it will be a very attractive office space. So, part of that though process is seeking the variance.

As you will notice on the design, originally proposed was a building that did not have any overhang or balcony area. What we have created here for the utilization of the potential office tenant is a second floor balcony area where they can have 5 to 7 ft. of outside space. They could have a nice French door out there similar to some of the uses that have happened over at the Washington House where they are going to benefit from the direct feel of the street. That is the change from this design to this design. This portion of the building is setback a little bit. You also see the shaded area here. What we are also doing with the first floor is we are completely renovating the first floor façade. We are going to set the building back into the beginning of the space back behind the curtain wall of the building. There will be a potential small area there for an outside patio, whether it is a restaurant or coffee shop or it is just more of a walking around covered area if it happened to be a typical retailer.

One of the other things we thought about and incorporated into Joe's design, even though it is not a finalized landscaping design between the two buildings, we want to create more of a pedestrian access way. We obviously do have a pedestrian access way on this side of the building with a covered arcade. We do have a walkway here. It happens to be along a direct vehicular traffic pattern. This, obviously, would create a

nicer walkway to the street.

Mr. Lopata: Jeff, may I interrupt for a minute, to remind folks that the stockade fence that some of you may have seen there is temporary. That has been temporary from day one. That is for construction and that is in our report. The developer knows that that is going to be removed.

Mr. Lang: That was what the long-term plan was when we secured the easement instead of building that back to a macadam covered area which partially was but prior to that point. Let's wait and figure out what we are going to do with the long-term development of this plan. Obviously, we put grass and dirt in there. We didn't want people walking back and forth and tracking dirt up and down the street. Obviously, the plan associated with our project is to create a safer and nicer pedestrian access way from the back parking area. It would benefit the residents of the building, the businesses, the customers of Mid-Atlantic Ballet and other potential customers in the building. So, we think that is a very big benefit for the project.

Roy did also speak about the back parking lot and the house on Center Street being involved around the community for years, working on the 102 project and having Joe on our group, we are very aware of concerns associated with parking downtown – access to parking. We actually were the developer of the project here and we deeded this land for the benefit for the community's long-term use. This parking lot, obviously, as you know, is a central location for access into this lot. When you do get here, as Roy pointed out, many times you get here, you can't get in, you don't know what to do. How do you get to the lot. You don't even really know that this lot really exists because it doesn't have any tremendous access off of Main Street. I think Joe is working on improved signage and those types of things. Even as we were developing 102 E. Main and telling people how to get in, you drive around Dr. Cox's building and you come up and you circle around, and you come back out the other way. I think this is a tremendous benefit to the community and to the local businesses.

If there are any other technical points we want to talk about, obviously, Joe, Dan, Chris and myself are all available for your questions.

Mr. Bowman: Are there any questions from the Planning Commission?

Mr. Begleiter: Mr. Chairman, I have a lot of questions. Jeff, I don't know who is going to want to answer these. The first one is really trivial. You made a comment about the height issue and you kind of offhandedly said that you wouldn't want people bumping their heads in the office space, but your letter talks about the idea that someday over the rainbow, the same people who work in the office space on the second floor might be actually occupying the residences on the third floor. Do they lose height from between the time they walk upstairs from their work to their apartments and they become shorter somehow and, therefore, they won't risk bumping their heads when they go home at night by walking up one flight?

Mr. Lang: When you put in office space, typically you have a drop ceiling because you have a lot more mechanical things that are going up in the ceiling. You have to hang an HVAC unit, you have to run all your wires, you have to hang your lights, and all kinds all kinds of things like that. So, you need a much bigger span in your space to adequately achieve a nine or ten foot ceiling. In a residential unit, you put your drywall on the top of your roof deck and you put your unit up on the roof or in a closet and you don't have to worry about running a bunch of stuff like is in your house. So, that is the explanation. Sorry, I didn't explain it very well.

Mr. Begleiter: That is alright. It just struck me as a funny thing. Stand by your diagram there for a minute and I am going to ask you about a few different things on the proposal. Some of them are related and some of them are not.

Let me first ask you, please put your finger on the boundary line between the Post Office and the existing property there. Yes, that heavy black line. On this diagram that we have that isn't up there at the moment, there is a dotted line just inside which I assume

is the same as the brown colored line there. That is the building itself, right? That is the physically existing building right now.

Mr. Lang: Yes.

Mr. Begleiter: The same line on the opposite side, on this chart there is another solid line and then there is a dotted line indicating the actual building.

(inaudible)

Mr. Begleiter: Okay Alright. That is fine. The reason I am asking is that I didn't realize at the time the 104 project was being built that it was going to be a promenade or an arcade, so I didn't realize that the front of the building is actually going to be narrower than the back of the building by a fairly substantial amount, and I was just looking at this chart and thinking they are proposing another overhang that goes all the way back to the building. And, the answer to that is no.

Mr. Lang: We thought about it once.

Mr. Begleiter: I'm sure you did. That is good. So, it is not an overhang.

In your letter you "poetically" referred to the fact that you are planning this attractive pedestrian walkway between the two buildings, and you have already talked about that, which will create a safe and aesthetically pleasing walkway, "where pedestrians can stroll and enjoy the ballet inspired mural on the building." You didn't mention it just now, but I took a walk along that mural and hadn't noticed it before but now I know it is there. In the proposal you talk about – and on the drawings that are behind you – the side elevations also being brick on both sides of the building. You are not planning to put brick on both sides of the building are you?

Mr. Lang: There is brick on both sides of the building. One of them is a brick wall next to the Post Office and the other one is painted with the mural.

Mr. Begleiter: It actually is not brick. It is cinder block.

Mr. Lang: Yes. It was Danny's architecture.

Mr. Begleiter: So, we have a choice to be made about whether we want a cinder block wall with a painting on it for people to stroll by and enjoy or a brick wall that, in my estimation, would look a lot nicer than a cinder block wall, but it wouldn't have a mural on it. So, I just wanted to clarify whether there was going to be brick or not going to be brick on that side of the wall. And, the answer is, there isn't going to be brick there.

Mr. Lang: Danny's drawing didn't depict the actuality of the situation.

Mr. Begleiter: I realize these drawings are preliminary anyway and you are not bound to them, but it is just what we have to go with. That is all. I understand that.

Mr. Lopata: He gets more bound to it as we go along. This isn't child's play, this is serious.

Mr. Begleiter: I am not raising it as a small issue. This is a massive, massive building by anybody's calculation. I am not an expert, but I would guess it is one and one half times as many square feet inside the post building as are in the adjacent building. Maybe even twice a many.

Mr. Lang: It's about 25,000 vs. 30,000 feet.

Mr. Begleiter: So, it is a huge building; so determining brick on something or not putting brick makes a difference. I just didn't want to seem trivial on that point.

Put your finger now on the building you just completed – the Newark Bank

building – on the front façade, and draw it in a line across to from the Post Office façade.

I am going to suggest when you stand on Main Street either in front of the Post Office or at the corner of Center Street or if you walk down to the green stone house (Dr. Cox's building), those three buildings now on either side of the old CVS building are really historic buildings. They are centerpieces of Main Street downtown. If you stand on either side of your project proposal now, you can't see those facades from the sidewalk because the CVS currently protrudes into the front and doesn't conform to their setback. So, I am going to at least throw out the idea for you and ask you to react to the possibility of setting back that façade. You are already talking about changing it substantially. You are talking about, I think, essentially destroying the one story façade of the CVS building.

Mr. Joe Charma: Landmark Engineering. That is a great observation, but pulling the building back away from the street is in direct conflict with the Downtown Newark Partnership Design Guidelines. The building should be pulled as close to the street as possible. As you mentioned, 102 E. Main Street has a patio in front of it. That always had been set back.

Mr. Begleiter: So is the Post Office and so is Dr. Cox's building.

Mr. Joe Charma: Right, but the Design Guidelines in the urban environment in the neo-traditional planning aspect, the buildings want to be as close to the street as possible. They want to be pulled up to the sidewalk with a wide enough sidewalk to have pedestrian activity and encourage pedestrians to interact with the buildings.

Mr. Begleiter: By raising the Design Guidelines in this context – in the context of the building you just completed and the context of the other adjacent ones, the Post Office and the Cox's building – are you afraid that the Design Committee, of which you are a member . . .

Mr. Charma: I am the Chair.

Mr. Begleiter: Do you think the Design Committee will stand up and shout, no, no, no, this is outrageous? You can't keep a setback the same as the historic Post Office and the historic Cox House and the historic old Newark Bank building. Do you think the Committee would do that?

Mr. Charma: I think they would. They have reviewed it. That would be a significant setback. You really can't see those buildings when you are coming up Main Street because of the building the way it is now.

Mr. Begleiter: I know, that is my point. That is exactly my point. We have an historic opportunity here to restore the site. That would be a total of four buildings that would be beautiful and centerpieces of Main Street.

Mr. Lopata: Ralph, if I could just interject. Joe, I think it is fair to say – I am not a member of the Committee – that the Committee members and the language in the Design Guidelines also refers to "in harmony with" or "complementary with" adjacent buildings. So, I could see the Design Committee thinking of this in another context.

Typically, downtown planners today, as Joe is indicating, strong recommend in against setting buildings back, but that is in order to not have parking in front.

Mr. Charma: Let me give you an example. That building is pulled up to the street. It is probably closer than the old Stone Balloon.

Mr. Begleiter: It may or may not be.

Mr. Charma: That is a very large building. In my estimation, a building of that size should be pushed back off the street so it is not so massive. I know we had those discussions . . .

Mr. Begleiter: There is a big difference there, I would argue – we are talking about the property across the street now – and that is that the Academy Building with the green lawn in front of the building is set back substantially from Main Street. It is not like Dr. Cox's or the Post Office. It is very substantially set back. And, the other property on the other side of the old Stone Balloon on the other side of what is now the Washington House, actually was pulled up pretty close to the curb in the style that you are proposing here. So, there wasn't this idea that we have an old beautiful building here, jutting out new building here, beautiful old building here, beautiful old building there. My thought here is that you have a string of at least four, and I think actually if you look further down the street at the Wilmington Trust building it is setback at the same as what seems to the layman to be the same distance back as the Post Office and the Cox building and your 102 E. Main Street. So, what I think is that what you have here is a very different situation from the Washington House. You have the potential here to stand in front of the old Post Office and really have a very conforming old historic vista even though we have a brand new building in it with all the wonderful amenities of a brand new building.

Mr. Charma: Just one comment about the Academy Building. If you go out West Main Street and look how far back the houses are set on those parcels . . .

Mr. Begleiter: It is non-conforming.

Mr. Charma: It was what the norm was for that time period.

Mr. Begleiter: I would like to ask you about the possibility about moving the building back to have the front conform physically to the other facilities.

Mr. Lang: Are you talking about chopping the front of the building off?

Mr. Begleiter: Yes.

Mr. Lang: Even though we are keeping the whole first floor?

Mr. Begleiter: You said you were inseting below the curtain wall.

Mr. Lang: We are inseting the storefront. The storefront is not structural at all. From a structural perspective you have a column here, a column here, column here and a column here. All your structural support for this building is in the front. The bay is back here some place. So, if you chop this all off . . .

Mr. Begleiter: You would have to move the structural support. As it is, the structural support is only supporting a one-story building. It is not like it was built to do three stories. Maybe you will discover, or maybe you have already have discovered, it is capable of supporting three stories. But, it isn't now.

Mr. Lang: So, your thought is that you would like to stand here and see past the first floor or see past the upper floors? Or do you really care?

Mr. Begleiter: Well, that is a very good question, and I have thought about both of those things. Let's come back to that issue if you don't mind because you haven't seen the worst yet. Let's come back to that question because I have thought about that possibility.

I did not know that you donated the land for Lot #4 where the exit is now, and I am delighted to know that and I congratulate you for doing that and I congratulate you also for this proposal which does, in fact, benefit the City overall.

Put your finger on the exit ramp from Lot #4 right there. You and Roy have also talked about what a tremendous convenience this would be to have these two lots working together, so on and so forth and I can see that. I think all the citizens can see it. You can see it from a signage point of view. You can see it from a traffic point of view. There are all sorts of reasons it would be beneficial. Take your finger now and pretend you are a car and you are coming out of that lot because there is no more space there on

Thursday evening at six o'clock and you need to find a space because you want to go to one of our restaurants and you decide to go across the street to a new lot. What would you have to do? And go all the way in there. And you have to go there and there, good. You just made my point. Now I am going to ask you the following question. The tree that is in the way there in your drawing, that is not an existing tree is it?

Mr. Lang: It is right there.

Mr. Begleiter: It is right in the driveway. It is about a four foot diameter Oak. It is an old tree.

Mr. Lang: It could be dying.

Mr. Begleiter: It could be dying. You could check it out. So, here is what I would like to ask you about. You designed that traffic pattern to accommodate the last 12 feet of the CVS building.

Mr. Lang: You are going to lose at least three parking spaces.

Mr. Begleiter: If you didn't have the last 12 feet of the CVS building . . .

Mr. Lang: Do you want me to chop part of the building off again?

Mr. Begleiter: If you didn't have the last 12 feet of the CVS building . . .

Mr. Lang: You give me four stories, you can have the front and the back.

Mr. Begleiter: I am glad you asked that question. You are getting a parking space waiver.

Mr. Lopata: He isn't getting anything yet.

Mr. Begleiter: You are getting more than a quarter of a million dollars in excused parking waiver fees.

Mr. Lang: I didn't even know that they were that expensive until recently.

Mr. Begleiter: \$272,000, right Roy? You are asking for a height limit waiver which we wouldn't give you but you would have to ask for that for your proposal – five foot so the people don't bump their head as they go upstairs. You are getting a one and a half times larger building than the one next to it. That is four items you are getting. The City, of course, is getting a tremendous benefit from your project, and I recognize that. Not only the benefit of the parking which I think is a big one, but I think the much bigger benefit than that is being able to create a beautiful looking building right in the heart of downtown across the street from probably the most historic building on Main Street – the Academy Building. Certainly the oldest, I think. But, I don't think it is unreasonable to suggest that this is not a one-way request. This is a compromise, a negotiation. So, I am going to suggest that you think about or get a reaction to putting a driveway where you proposed the tree, keep the old tree. If it dies you can always put in the proposed tree, chop off the last 12 feet of the building and make the driveway go straight through so you don't have to do three "S" curves that you have just traced with your finger, to accommodate the parking. You can either react to it or not as you wish, but I wanted to put that out.

Mr. Lang: One of the most significant issues is for our existing tenant is to minimize the down time for the business. If you tear the back of the building off, they have to fully move out of the building and wouldn't be in it for another year, probably, because I have a tremendous amount of site work – remediation – all kinds of stuff in the back to bring the grade correctly. It is really not going to be feasible for their business plan. Their business plan is for us to hopefully get approved in an orderly manner, for us to build the structure, and then they reoccupy the building in a three-month period. They need to accommodate these building modifications for two to three months and they are going to



be forced to move, relocate some place else, which really takes another tremendous drawback for the community as well as for them.

Mr. Begleiter: One of the things you mentioned in your proposal was that someday - maybe over the rainbow – the Ballet School would be interested in expanding into the second floor commercial space that you propose for this building. So, here is where your idea that you talked about for the front came to my mind which was, don't chop off the back of the building, chop off the back of the existing building but use the overhang capability in the rear of the building and make the driveway go under the building.

Mr. Lang: You have to create another area behind which would then eliminate the benefit of doing that.

Mr. Begleiter: Right, there is no point in doing that, so I will leave it at the idea of chopping off the last 12 feet of the building. Essentially, it would boil down to the space you had dedicated currently for the stairwells.

Mr. Charma: Can I talk about the logistics of why the parking and the access is the way it is? A straight shot across there, I could see your point. In my mind I do enough of these things and they do enough traffic calming. In a parking lot, the worst thing you could do is create a long straight line because people drive way too fast and you can see it in any parking lot. In a shopping center, they blast through a parking lot. Making people have to turn, they are not going to be blasting through there. This configuration, I felt, was going to serve the Ballet best because it is now going to create a nice place for someone coming up to drop off a student. I drop my daughter off there. You come right up the back of the building and now it becomes the front of the building with parking at your front door. You drop your child off and then go right back out onto Main Street. I think from a traffic calming perspective, having a couple of little zigs and zags is a good thing. You talk about this cross flow when Lot #4 gets full. What happens now, and it has been my experience, I come up Center Street and I am going to go into Lot #4. The sign says Lot #4, I am here and I have to turn around or go up New Street or something. You will just be able to make a left turn into this parking lot. Yes, you will have people come up to Main Street into this lot but, technically, they shouldn't enter the lot from Main Street because there is a Lot full sign.

Mr. Charma: What we are trying to accomplish here is that we are trying to reutilize a way under utilized building and make it into something that will serve the community.

Mr. Begleiter: I hear you. One more question if I may. You guys were the developers of the Grainery Station. Is that correct? The building on Elkton Road that had the Star of India restaurant in it. And it had the Arts Alliance in it?

Mr. Lang: Yes.

Mr. Begleiter: Do I remember correctly that before this Commission you spoke extensively about your efforts to provide future inhabitation for the Arts Alliance in the Grainery Building?

Mr. Lang: Yes. We tried.

Mr. Begleiter: Would it be wrong for me to be skeptical of the similar efforts that you are making now to retain the Ballet?

Mr. Lang: We have had numerous conversations with the Ballet. We are very committed to finalizing their long-term use in the facility.

Mr. Lopata: Where is the Arts Alliance now?

Mr. Lang: The Arts Alliance moved to Market East. We worked with the Arts Alliance and bent over backwards to try to accommodate them, in my opinion. You can obviously speak with members of the Arts Alliance, but they felt that they couldn't wait for the necessary time schedule. They wanted to relocate to another building. We were going to

relocate them for a period of up to nine months for free. Maybe it is something we should research before we jump to conclusions on that.

Mr. Begleiter: The building that is currently in existence on Center Street in the proposed future parking lot, how many apartments does that have?

Mr. Lang: This house?

Mr. Begleiter: Yes.

Mr. Lang: I couldn't tell you exactly. Isn't it a one unit?

Mr. Begleiter: At the bottom of page #2 you make reference to the commercial space creating the need for additional parking which cannot be accommodated on this parcel. Additional parking could be accommodated on this parcel. It is very, very expensive but you could put an underground parking garage there? No?

Mr. Charma: For the same reason that the Stone Balloon/Washington House didn't go underground. (inaudible)

Mr. Begleiter: Also, if you don't want to destroy the existing building.

Mr. Charma: I was just going to say that if you have enough time and money you can do anything. Our objective here was to, again, reutilize the existing building and not tear it down.

Mr. Begleiter: Because it is such a beautiful building. Why are you not trying to tear it down?

Mr. Charma: We are trying to turn a sow's ear into a silk purse.

Mr. Begleiter: That is beautiful.

Mr. Lang: Another point that we were trying to make is that if we had proposed a totally residential utilization of the second and third floor, the parking requirement associated with that use is much less than the parking requirement associated with a commercial use. So, even though we are proposing a commercial use on the second floor, it requires additional spaces as a parking waiver option.

Mr. Lopata: But they are not full-time spaces.

Mr. Lang: They are different spaces as far as the way the lot would be utilized.

Mr. Begleiter: I like your proposal, I hope a version of it is approved, but the reason I am raising it is that I listed off a number of things which I think, in this case, it is fair to say the City is gaining and the developer is gaining. So, I don't think it is unreasonable to discuss those tradeoffs and propose some compromises. That is my only reason in raising that issue.

Mr. Chairman, thank you for your indulgence for all those questions.

Mr. Osborne: I would like to just offer a few words. I think it is an attractive plan. I would also favor a front inset. (Inaudible) the current support columns that are in place with open space like a porch area between the columns and what is ultimately the front wall. What is the distance between the front columns and where the front wall would start?

Mr. Dan Hoffman: Design Collaborative Architects. I think in your updated packet, you have this image right here. (inaudible) existing ballasters of a different colored brick than what the existing façade is. (inaudible) of the building then recess it into and underneath the steps.

Mr. Osborne: Could you point on the diagram to your right where five feet would take you, approximately, from the edge?

Mr. Hoffman: If you see the two pair of doors that are in the corner here about another two feet past that, about two-thirds of the doors plus the sides of the doors.

Mr. Osborne: So, it wouldn't take it quite back to the imaginary line that Ralph had Jeff draw across. It wouldn't take it that far?

Mr. Hoffman: No.

Mr. Osborne: I'm thinking that might be an attractive compromise.

Mr. Hoffman: Right now the intent is just enough, if it is a restaurant, to have tables to sit underneath there. If it is a retailer, they can have a sidewalk display like the 5 & 10 does underneath their entrance area.

Mr. Osborne: I would favor a plan with that kind of an adjustment, taking it back to that inset. I don't mind the columns. I can appreciate that those structural supports provide a purpose and I can live with that. I would favor that inset being back as close as possible to the line of the adjoining buildings.

Really, I don't have any other comments. I think the traffic flow behind the parking benefits are attractive. I would like to see brick, probably, also on the sides instead of just cinder blocks. Those are my feelings.

Ms. McDowell: First of all, I am trying to remember, because I know I was around before the CVS, what the front of it looked like. Wasn't it back a little bit further than it is at this time?

Mr. Lopata: The difference was that the CVS put that horrendous concrete thing across the top for their logo.

Ms. McDowell: I seem to remember, of course I was much smaller then, it seemed to go back in more. Also, my memory from back then was when I was a little girl, used to cut through the Grants, which is what that building was, and go out the back and walk through the drive which is blocked off now, which would be the same traffic pattern that you are proposing. Cars used to go through there, and I don't remember there being any type of problem. I walked home from school that way. There was the house there that you are proposing to take down. Remembering how the traffic pattern was, to take the house down and make it bigger, I don't think there would be a problem with the traffic pattern. Of course, traffic is a little different now than it was back then.

I also wanted to comment that I spent many years going in and out of the parking lot back there to drop my girls off and anything that would enable them to more safely get to the building and leave the building, I am in support of, too. So, if that traffic pattern makes it a little easier for them to get dropped off closer to the door and not have to walk and cut through back ways to get there, I support.

Ms. Sheedy: I am still not clear as to what the profile of this front elevation of this building is going to look like. Here is what I am picturing, that when you look at the CVS building now, when you are looking at the doors there is a wall, and that wall is where the supports are?

Mr. Lang: There are columns there which support the upper floors.

Ms. Sheedy: Okay, without radically restructuring the building, you need to go to that wall.

Mr. Lang: You keep that wall where it is. You can step the store front back anywhere you want. You could step it back two feet, five feet. With structural support of the building you have storefront step ten feet back because there is no sidewalk at all in the

area. A lot of suburban shopping centers are looking like that now where you actually have your structural column and then your store front back. We are not proposing stepping back that far because we already have a 12 or 15 foot sidewalk there anyway. We are talking about a concern of, obviously, stepping the building further back. The building is already approximately 15 feet back from the street, which is farther back than a lot of buildings. Most new buildings that are being built you need a five foot walkway by Code minimum. We could have proposed tearing the building down and moving it closer to the street not move it further back from the street and still meet the Code requirements. Getting back to your point, we could have a column here, here and here and as you are walking down the street you could walk all the way through or we could close it off and have these individual bays, but it creates an airy feel as you walk down the street and your storefront is set back. From a retailer's perspective they want the storefront up so when you have all the people walking by that are walking on Main Street, then you have to look under an area to see the store front which is where they are trying to merchandize their product. If we keep pushing that further and further back, it is harder for the retailer to merchandise.

Rob brought up a good point about the orientation of the street. Nobody looks in the Post Office window. 102 E. Main has a patio that you have to go up three feet to. We could have proposed to pull this building closer, but we left it where it was. This is Dr. Cox's building which is utilized as not a true retail type use. It is more of an office use and it is stepped up off the street. The component to these two buildings, obviously those buildings are set up farther. They are not even attempting to be a merchandizing retail type of building, which is what this building was designed and what we are proposing to design it for. So, if you step it further back, it makes it less attractive to a retailer. And, probably what happens is, let's say we rent it to Iron Hill. Iron Hill comes in and says I want to put a huge patio out there and I only need to put a five foot walkway out there like Caffè Gelato does. I could rent this to Caffè Gelato. He has now a 30 foot front patio right on the middle of the street. This is a great marketing deal for him, but we just stepped our building back so we can create this outside seating area. Think about the whole width of the building all the way out five feet from the street. It creates some issues from a retailing perspective and a structural perspective. You can maybe step this second floor back five to eight feet and the building would go up and over and up and you would be able to look underneath of that structural piece and it would go up in a flat plane. That is probably a reasonable way to design it.

Ms. Sheedy: I am not, actually, raising an issue. I just can't picture it, and that is the problem I am having. The front of the CVS building, is that where the columns are or are they in the wall that is a little bit in back of the current front of the building?

Mr. Lang: The columns are in the front wall.

Ms. Sheedy: If you look at the profile of the building you are proposing, you spoke earlier about having a balcony or open space on the second floor on the front. Is the building going to come up with the columns and then have a roof that is either going to be over an arcade or over storefronts and then go up after that setback for the open space on the second floor?

Mr. Hoffman: Looking at the front elevation, you are absolutely correct. The retail band, here, is in line of the existing façade. Downstairs on the first floor the storefronts are actually recessed five to eight feet. We are still working on the floor plan. Above that, this building is actually skewed to Main Street. The building is not square on the front. If you are looking at the building the right side of the building projects out probably two to two and a half feet further than the side closer to 102 E. Main Street does. I tried to show a little bit of it on the larger elevations here. One the side elevation sheet which is the side that faces 102 E. Main (inaudible) be able to square off the front end 90° to the two sides. So the front corner on the 102 E. Main side is setback a full foot and a half just to get a parapet cap on top of the existing wall. Going across the front façade it is easier to see if you go to the upper elevation. When you get to the other side of the building, using that straight plane, the building is now setback about three feet on that side. We are offset from the skew of the ground floor. If you look at the center section where Jeff was talking about having the balcony, the parapet on the top to right here is

actually where the center section of the building would be. So you have a U shape to the front façade on the upper two floors. They are all setback a foot and a half to three and a half feet depending on what side of the building you are looking at from the lower existing façade.

Mr. Lang: If you look down on it, it goes over in a “U” and comes back down.

Ms. Sheedy: So, the second floor balcony is going to be like a European balcony – very narrow.

Mr. Lang: It is going to be five feet by 30 feet. It will be five feet deep.

Ms. Sheedy: So, there is going to be some view space down along the front of the building. Not as significant as along the front of the Post Office building according to this. The profile of the front of the building is going to be more irregular which can be perceived as more interesting and also allow more of a view down the street than the current building. Is that correct?

Mr. Lang: No, because the current building is only one story high.

Ms. Sheedy: I realize that.

Mr. Lang: If you are standing on the street and you are looking up at eye level going toward 102 E. Main or the Post Office, that exterior corner is going to be same of the first floor.

Ms. Sheedy: But, you are still going to have this setback, right?

Mr. Lang: It is setback on one side further than the other because of the orientation of the building and then setback in the middle to create the balcony. What Ralph was talking about was taking the whole thing and pulling the whole elevation back. It is more problematic for us to step the entire building back than just stepping just the second and third floor back. One of the discussions was, if we move the whole second and third floor back five to eight feet does it won't create as much of a visual barrier if you are looking down the street, which is a summary of some of the conversations we have been having. We create a balcony across the entire front, not just in the small little area in the middle.

Ms. Sheedy: What I was vying for is to see if we could somehow get the best of two worlds with keeping the pillars but still getting some kind of a line of sight that was a little further back. I see what you are saying now and that is not what is going to happen according to this plan.

Mr. Lang: You could create an open walkway through the area that is available on the first floor and minimize the structural component of this band, but you are still going to need some band there. You are still going to have some lack of view. The thing is, you can't really get there. You are walking here then you are going to walk back here and then you get this patio and you walk back out. In reality, it is a visual thing more than it is a functional thing because functionally you can't walk that close to the other buildings. Even though we wanted to move this building back, we are moving back for aerial and/or visual orientation up the street, but you really can't functionally walk in front of those other buildings. It is just going to create a bigger patio in the front for whatever the use is.

Ms. Dressel: I came to really like the idea of pulling it back some and having the columns there and pulling it back slightly. I think even if it is five feet, which you are already proposing, and just removing some of the brick on the side, it provides an airiness. You are right, people might not walk up there, but I think it makes it visually appealing and I think the guidelines set up by the Downtown Newark Partnership are meant to inhibit parking in the front of the building, hopefully, not to limit a visually appealing Main Street. The other thing you were talking about is that people are not looking up into the Post Office, but Grassroots really doesn't have great window space

either and I have never been in there when there weren't quite a few people. So, I think if we end up with the right tenant, hopefully, that wouldn't be an issue. I like most of what I see. My reaction when I saw the color was red brick again. I just don't want it to become a tunnel in that section of Main Street.

Mr. Bowman: I am going to open the discussion up to the public.

Mr. James Lisa: Good evening Commission members. 11 South Pond Road, Hockessin, Delaware. I am a partner in an adjoining property. My partner is, actually, my son, James P. Lisa, III. He is going to be graduating from the University of Delaware this coming June and he used all his money but he needed my backing for a loan. We are both on title. He happens to own 11 and 13 Center Street. His intention was after graduating was to move in to one of the duplex units and rent the other. This past Thursday I got a phone call from a friend telling me that there was a project going on at the old CVS building and asked me if I knew anything about it. By-the-way, my son bought the property in September of 2008. There was no active application when he purchased the property. The first time we had heard about this particular project was last Thursday when a friend called and asked if we had received the Planning Department's letter. I said I had not. I went and checked my mail and got Mr. Lopata's letter and on Friday went to the Planning and Development to review the file.

The actual property that we own is this one right here – 11 and 13 Center Street – so we adjoin the CVS. One side is the US Post Office and the other side there is a residential home with RS zoning. I did not notice in the file any type shadow study that was done. Currently, our property is residential in nature and we do enjoy light that comes in there, the tenants that are in there enjoy the light. What my son liked about is that we did have open space back there. So, with a 35 to 40 foot building, we are concerned about how the shadowing is. If there isn't a shadowing study completed at this point, we would request that one gets completed by an independent third party and is shared with us so we can understand how different shadings will impact our property.

I guess if this was 102 E. Main Street there might not be quite as much need or maybe if this project stopped at the Post Office property we wouldn't have that issue. We didn't see in the file a traffic impact study prepared by any independent third party, and we would like to see one prepared independently because we don't understand the traffic flows. I know Mr. Lopata noted earlier the people that actually use it. I am not sure of the volume that is actually generated in and out of that lot right now and what this building will actually generate in and out because what is starting to happen is as opposed to having a residential house next to us now all of a sudden we are going to have a parking lot there. I have no idea what kind of volume of cars are going to come through there, the times of day they will go back and forth; and, as part of that study we would like to see Chapel Street and New Street study because you all know that we have a project on Choate Street. What we find is that New Street and Chapel Street are a total failure right now. When you open this up, as opposed to, as Mr. Lopata says, everybody has to be on Main Street right now. When you open this up everybody is going to come in, they are going to go through the residential area, they are going to go down New Street and they are going to be even more jammed up onto Chapel Street. It backs up to Choate Street right now from Chapel, certainly during rush hours. I think the study would actually clarify and it would be good to have that in the file.

Also, in the Planning Department's letter I noticed that it said that no property would be negatively impacted. I am not sure whether that meant the value or not. I am concerned about the value, and I am wondering whether an appraisal was done of the adjoining properties and what does that do to the value of our house. What we are going to have is a residential house of RS surrounded by BB. BB is all commercial. This is going to stay RS, as Mr. Lopata pointed out. They will have to follow the Zoning Code so this will be in my opinion a commercial parking lot for commercial use. I think we are going to be an island with RS zoning so I think it will hamper us and certainly we have the right to come in and ask for some type of a rezoning. In my experience, it generally takes quite a bit of process and quite a bit of money to actually try to rezone something where I think it should be relatively simple to probably do that given the environment that this property is going to be put in.

The other comment I just wanted to make briefly is that when we were doing Choate Street project, I was constantly referred to go read the minutes from all the previous Council meetings about Center Street and the fact that it is kind of one of the last traditional neighborhoods. There was all this write-up about the light from the University of Delaware shining on Center Street and how to keep it residential. I do think this plan will change the character of the neighborhood and if we are going to do that, we will have to think about what we are going to do with the entire street, and, perhaps, readdress what would be done there with regards to students in general.

Also, when we purchased the property in September, we had our survey done. This eastern wall of CVS is actually on our property according to our survey so there is no easement. From what I am hearing tonight it sounds like the wall wasn't intended to be moved, but I just wanted to be sure that if it is on our property, it probably should be moved or that needs to be clarified. And actually, these trees that are there, they are not there, that is the access to our garage. I am not sure how those trees got there on that green. That green is actually our green not the project's.

The other question that I am curious about is what will be done in the retail establishments there because we are going to stay RS, and if there is going to be alcohol served, typically that is an issue to have alcohol in RS. Perhaps a deed restriction to no alcohol on the property would be considered by the Commission.

We are also concerned that if the project is approved and we come through at a later point in time and tried to get BB and wanted to go to a 40 foot height limit as well, we are going to be in these folks' windows. The back lot setback is 15 feet. So, I don't know whether the folks on the second floor will have a problem with our project. We don't think it is right if it does go through that they would come and object to us. So, we would like to see how that could be dealt with.

In closing, I would like to say that I am not necessarily opposed to the project. I will say that I am disappointed at the total disregard that the developer had particularly since we have lived three houses apart in Newark . . . (inaudible). If I was Jeff Lang, I would have called him up and said what is going on. He didn't know I was an adjoining property owner, but I will say it is total disregard, not only for me but for my 21 year-old son who is trying to become a professional in downtown Newark. I would request that the developer consider tabling this project and maybe take into consideration what was delivered tonight by incorporating our project with it. I don't mean incorporate it as part of their project, but we should probably plan this whole thing. I am fine with it not being residential in nature anymore (inaudible) but I think you are stringing my son out by doing that. What we would like to do is have the opportunity to come up with a plan for our site. Since we just learned about it last Thursday, I have no idea what we want to do with that site. I think discussion between an adjoining neighbor and the developer probably at some point would make some sense before this thing is actually acted on. Thank you.

Ms. Delores Ballintyn: I am the president of Mid Atlantic Ballet's Board of Directors. I would like to speak for a moment about the need from our perspective for this building's rehab. We have currently just over 100 students ranging from the age of six to 17 years of age. We have about 70 families that come into the studio up to four to five times a week that visit Newark, and go in and shop in Newark. We need a building for our studio for the safety of our children, for parking, and for so many issues. Mr. Lang would accommodate us and help Mid Atlantic Ballet stay in Newark. We are celebrating our 11<sup>th</sup> year as a ballet company. We provide a cultural benefit to Newark for our children, and part of that comes by staying in Newark. Our dancers are also able to go out for lunch because they are able to walk on Main Street safely. That is a huge benefit for us. It is a huge marketing tool. We want to stay on Main Street. Mr. Lang is willing to make the accommodation to have the right height requirement for our studios so our dancers can dance safely. If you know anything about the dance world, that is a huge requirement that we need to meet and very difficult to find. I cannot speak highly enough about the accommodations we have discussed, the arrangements we have made, and commitment Mid Atlantic Ballet would like to continue to have to Newark to providing

this cultural experience for the dancers, the girls and boys, who dance in our studio. We perform at Mitchell Hall at the University of Delaware. We perform in studio as well. We want to continue to stay right here in Newark and we really hope that you will consider a very, very strong request from the Ballet Company. We can afford to do so because of what Mr. Lang is proposing. I thank you so much.

Mr. Niles Norton: 27 Center Street. Mr. Lisa said so much of what I had to say that I don't need to repeat it.

I want to congratulate the City for getting their parking spaces. Congratulations on a beautiful design. I am shocked that I didn't hear one person here tonight until Mr. Lisa stood up say, what about Center Street? What happened to the street that one year ago when we came in front of you everyone seemed to care so much about? I didn't hear one person say what about the traffic? What about tearing down a residential home to put in eight parking spaces? What about the trees? I didn't hear any of that which is fine because with this development, like Mr. Lisa, I see huge change with this. Basically, if this goes forward, it shows us that you do not feel the same as you did last year. If you want to tear down residential homes to put an access to commercial space, you are basically stating how you feel right there. If a traffic study has not been done to see how it affects us residents, that, again, states it. So, I support it because I am excited for the chance of what it could bring to our street of Center Street, and I agree that it would be nice to table it for a little while so we could all decide how this would truly impact the street rather than just pushing it on without giving everyone a chance. I did not know anything about this until Thursday myself. I tried to come down to the City yesterday to take a look at it before the meeting tonight and it was closed. So, I got to look at it for all of three minutes before I got here. I guess I would like to hear from someone who last year that said Center Street was a charming residential enclave, was the word, how this would, as it goes forward right now, either maintain or improve Center Street as it is right now, from anyone.

Mr. Lopata: From the Planning and Development Department's perspective, this goes back a lot longer than the "charming" Center Street comments. The review of this site goes back to the mid 1990s, which has become lost in the discussion. We had a 15 unit project that was proposed. The only difference here is now we have a project that is less impactful in terms of traffic and development except for the Center Street house. That is the one change in terms of the impacts that you are talking about. From my perspective, that building is essentially the same. This is a little bit higher but it is less impactful in my view. So, that is the change. The Planning and Development Department has been consistent from day one. We want to see the CVS building redeveloped, and that site is an eyesore. Anyone living across from it who doesn't think that this is an improvement is saying something I just don't agree with. I think this is a much better plan. Can the plan be improved? Sure. And as we go forward, hopefully we will improve it. I think this is a positive to the community – the larger, wider community.

In terms of Center Street itself, with all due respect to Jim, this a low traffic generating use at this location. The distance between those two parking lots will have a relatively minor impact because the route will be between the two parking lots, across the street from each. Yes, there will be some folks that will cut through the neighborhood. That doesn't preclude leaving the area relatively further north toward New Street as the kind of residential development that Jim, in fact, himself is building in. I think that residential enclave can be maintained and strengthened. I don't think this will negatively impact it. It certainly impacts the immediate properties, which I think is some of yours and, obviously, Jim's son. There is no doubt about that.

Mr. Norton: It will impact it in a negative way.

Mr. Lopata: I didn't say that. I said it will impact it. It will probably impact it in a positive way in terms of its value.

Mr. Norton: In terms of putting a toll booth 15 feet from the property?

Mr. Lopata: It will become a more valuable property. There is no doubt about that,



which is why you said you supported it.

Mr. Norton: I support it because I see that the Commission will have seen a change in the area. That is why I support it. And, I am all for that because I realize once it moves on the Planning Commission and City Council will agree that, yes, this area is changing, downtown is growing and we can tear down residential homes to put a toll booth up beside someone else's living room. That is what this comes down to. Sure, there are not many people it can effect but, like I said, it is great that the City gets eight parking spaces.

Mr. Lopata: It is more the access than the eight spaces.

Mr. Norton: What about tearing down the Post Office and coming up through there?

Mr. Lopata: I think that is a terrible idea.

Mrs. White: 103 Radcliffe Drive. I have a quick question. The ten apartments on the third floor will have how many bedrooms?

Mr. Lang: (inaudible)

Mrs. White: I am going to address five different points. First of all, it is a 64 parking space waiver. I know the City is getting something for it – the parking in the back and the house being torn down. There are eight parking spaces as you go in from Center Street, but you are losing five parking spaces where two dumpsters are located and where one enters the lot behind there, so really it is only a net increase of three. Once the City gets the lot those eight, or what is really a net of three, don't count. In essence, you are going to have 61 parking places that you should have but you don't have. One has to think of the impact of this on a City and the people who shop there, are employed there, and live in these apartments with no parking. However, you are arguing that you are getting these other things, that impact is still there.

The second thing has to do with tearing the house down on Center Street. I object to demolishing this. If you think of houses along a residential street, they are like even teeth along the street. This is like knocking out one of those teeth. It has been observed by another speaker that Council has already voiced the opinion that the Center Street/New Street area is an area that should be preserved and encouraged to be more owner occupied. This is going in the opposite direction. I personally don't think, although it has been asserted that it is, such a benefit to be able to connect between Lot 4 and Lot 3. I use Lot #3 all the time and Lot #4 sometimes. It is very easy to get into Lot #3. So, I think the detriment is greater than the gain. That is my personal opinion. I am sorry to see that house torn down and I think I wouldn't want to be living next to it either.

Now we are going to get to the front of the building and the building itself which I am going to talk about. I feel this building towers over the historic Post Office building here, and you can get the view by seeing this required elevation that shows the buildings on either side. So, here you have the Bank of Newark building with is a very old building and you have what was the one store CVS building and you have the Post Office. I would have preferred – as it is, it is not attractive – but I would have preferred one story over it. If you look from here on, the Happy Harry's building, I believe Dan Hoffman was the architect for that, I congratulate you. You did a very nice job on that. I do think that when you look at it the continuity here looks very good. I would have preferred only one more story there. If ten apartments are allowed, then put ten apartments on the second floor and stop. If you don't want those ten apartments, then put offices on the second floor and stop. That is what I would prefer. I am particularly upset that not only is it three stories and very high but it is the feet. The argument is made that the building is a very old building, maybe 150 years old – the front of it at least. It does have a sloping roof. Here you are going to a flat kind of thing. In addition, this building is very massive. If you look at the Bank of Newark building and the width of this you not only have a very high building but you have a very massive building. So, those are my comments on that.

I was at the Design Committee, although I am not a member of it, and I take notes at those meetings which is easy to do when you don't get to talk, and there was never a comment that talked about the relationship between this building and that building or about its massiveness. There were many other comments that we looked at.

The other thing that would be a possibility would be to make it two stories in the front and go back and make the last part three stories. There are variations that could be done so you didn't have the massiveness.

Then I want to get to something that I had brought up previously when the first developers came to you and then to City Council on the project where they wanted 15 apartments. This has been talked about tonight, but the building as it is currently, sticks out like a sore thumb between the historic Post Office and the Bank of Newark building and, of course, the green mansion. I had a picture which I forgot to bring which shows about 12 to 15 feet. The question was asked what this building was before. When I moved into town which was some 35 years ago it was Sharrah's Fabrics and then it has been said that it was Grants before that. But, looking at this data, you know that the CVS building does not go back to the time of these other historic buildings.

In terms of the setback, I totally agree with Mr. Begleiter that the building should be chopped off and be in line with the other three buildings. I wanted to point out, by-the-way, not only are the Green Mansion and the Bank of Newark building on the National Historic Register but in the Design Guidelines, which shows a bunch of different buildings that represent importance to the streetscape in terms of architecture and other features, one of them is the Post Office building. So, I think some respect should be made for it. I really think that that building, however nice it might be in some other place, diminishes this building by its height and its massiveness as seen from Main Street.

In terms of having the setbacks all the same, I would like to also read in the Design Guidelines under Relationship to Street, "The new building setback should be consistent with that of neighboring buildings . . ." It goes on to some other things. It is important because down the street at a building that might be a different one where the buildings come up to the sidewalk where you might want it consistent there. But, here we have not only buildings that are set back but historic buildings and the building setbacks should be consistent with that of neighboring buildings.

Mr. Bowman: Mrs. White, I suggest you move on. This has been covered by Mr. Begleiter and repeated now about three or four times.

Mrs. White: I agree with Mr. Begleiter. This is a great opportunity to fix that issue. Those are my comments which have to do with the large parking waiver, the problem of losing a house on Center Street which disrupts the flow, the height of the building which I feel should not be 40 feet and that there should be a setback similarly which would be good if a restaurant does come in which would give a greater patio area. I think just having the (inaudible) with an opening does meet the problem because the stories up above aren't going to be setback enough to have a consistency with the buildings on either side. Also the concern to honor the Post Office building. Thank you very much.

Dr. Thomas Cox: I own 94-96 E. Main Street – the Green Mansion. I am possibly the larger owner of Lot #3 that I lease to the City. I probably have the majority of spaces. And, again, the fear I have because of my dental business – I also have an insurance agent in there who moved down to that lot from the Newark Shopping Center because of the free-for-all at the Newark Shopping Center. He could never have spaces in front of his business because people zoom in there and park and people would have to walk from one end of the parking lot to get to his business. So, he enjoys Lot #3.

The parking waiver always come up; the lot has been working fine now. It was jammed at some point within the past 12 to 15 months. There was a point that you couldn't find a space. People were parking outside the lines and it was becoming a real nightmare. Some of it might have been while the construction was going on, but it was a little bit prior to that, too. All of a sudden it has opened up, and it is great. All the

businesses I have talked to from Gelato to the hair salon say it is working great now, but the City says they have monthlies that are over, I think, across the street where the University bought the (inaudible). They don't know how long all those will stay there. If that zooms back at some point, you have got all these waivers and the fear that we have is that if that lot again gets jammed up again. The parking waiver is the anxiety that I have. There will be no monthly permits be allowed for the building. Is that right?

Mr. Lopata: None for the residential tenants.

Mr. Lang: My understanding with the monthly permits is that they are all regulated by the City. So, it is the City's ability to administrate how many monthly spaces they want to give. We are agreeing that our residential occupants would not be allowed to purchase monthly permits. That is the only thing that we can assure.

Mr. Lopata: That was a business building. CVS was in there, and the Ballet is in there. They would have the same rights as you have or anyone else has. You have some additional rights because you have rights as a land owner. Any tenant in there would have the right to get on the waiting list which is substantial. We are more concerned from an operational standpoint about residential users, especially students, because they park and leave their cars all day. We are not going to rent them to them, and the key thing here is we want to be sure that the landlords tell tenants that because it becomes a hassle for us.

Mr. Lang: As an example, the Ballet probably has six or seven thousand square feet and most of their users are drop off. They don't have a tremendous amount of day-to-day parking needs.

Mr. Lang: At what point does it get to be the point where the City has to address a longer (inaudible).

Mr. Lopata: We have other long range parking issues.

Mr. Lang: I do understand your concern. It would be my concern also from a business perspective because my potential tenants are going to do the same thing as they do at 102 and/or your building or our building. They would say, well, is there any parking back there? I would say there is a big lot back there and they would walk back there and say why are there no parking places, they are all used. That is a concern of ours developing the building. Presently, the lot, in my opinion, is somewhat underutilized because of the way they have handled the monthly spaces. If they continue to handle the monthly spaces that way and don't resubmit them back into this lot, that lot will work well.

Mr. Lopata: By the way, I want to make sure everybody knows that we did receive a letter in opposition from a resident of Washington House. The Commission members received that.

Mrs. Sheila Anderson: 206 Sypherd Drive, Newark. Mr. Begleiter, you are an answer to my prayers. I could not agree with what you said more. So, I don't need to repeat it. To the gentleman who spoke about his residential area being lost, that is a real concern that nobody seems to care about that at one point not too long ago was really important. Yes, we lose yet again a magnificent tree. People know I am a tree person. If any of you have been over there to look you see in front of that home is a gorgeous mature tree, one of five remaining in that area. To me three parking spaces aren't worth it. I don't think moving back and forth back here is one of my issues and I know I won't win it so I am moving on. But, I hear your plea. I don't think this project is ready to go forward. It has all the signature elements of "Lang Land," right angles, stock windows, red brick, a flat front façade and not very attractive. By all means, it should go back. This is sticking out in front of your face -- no matter what it looks like, the position of this hard surface building right there in the heart of our historical area with these beautiful buildings next to it. Mr. Cox does a superb job of keeping the landscaping up, the flowers, the shrubbery. It is one of the prettiest properties we have. The Post Office is getting better at keeping their property up. It has two beautiful trees in front, but these two Lang properties now are hard and in your face. We didn't wind up with one ounce of green,

which was promised at the 102 Bank Building. Go back to the record. It was promised that there would be some kind of planting formations in front of there. We now have bunker cement that is not attractive. This building now that is being planned is, as Mrs. White says, much wider than its two neighbors, and it is going to be massive. I can live with massive. There is Washington House across the street. But, Washington House, if you pay attention, is still back from the slate wall that is in front of the Academy Green. You take a turn and go back about five or maybe eight feet until you get to a door. So, there is a lot of front space there before you get to that building that softens the massive size of it. So, I would recommend tonight that the Council table this, that it go back to the designers because that is mostly what we are hearing. And, by all means I would think of something to do that might soften it with a little green. Thank you.

Mr. Bowman: We are back to the table for the Commissioners.

Ms. Brown: First of all, Mr. Lang, this came up before when you talked about the building and the lot next to it. At the time, you hadn't talked to your neighbors. A lot of this discussion we have had here, if you had talked to the neighbors about this property and what you had proposed and taken the time, we wouldn't have some of these issues. So, I think that is something you need to keep in mind.

The second thing is, I agree with Ralph and some of the other people. It needs to be set back. It sticks out. It is too big. It is too close to the curb. There was not even a definitive answer yet on whether you had done the engineering that said that the existing pillars would support the structure in anything I read. I didn't see that. It said that the City had proposed that that had to be done. So, that is not set in gold yet either. I agree with Mr. Lisa. You did not think about how it was going to affect the other properties. I may not agree with everything he said but he has a real valid complaint with you having such a high building – three stories in the back. My proposal is that you do one story to accommodate the dance school. I think a second story for a dance school is not appropriate. I have been in the commercial space before under a dance school. I have to tell you that it is like a herd of elephants running through. I also propose that we only have two stories there. I think the building is much too massive for this space and for the rest of the street.

The other thing I want to talk about is the traffic. Your idea about, perhaps reducing some of the traffic off of Main Street is a good idea. However, people are either going to go into Center Street and come back onto Main Street or they are going to go out Main Street and go into Center. They are still going to be on Main Street. If they exit onto Center Street and they don't come back to Main and they take a left and go down Center Street and past the cemetery, they are going to have to come out on Chapel Street. Coming out on Chapel Street and making a left-hand turn is a dangerous thing. I know several people who have had accidents there because there is limited visibility when you come around that curve.

The second two things I have are, I agree with Mrs. Anderson about the tree. We have to stop cutting down our trees. The very last thing is that I am tired of brick. We really need to get something else here. It seems that most of the properties that you developed recently are brick and I have heard comments from many residents, actually, even when I hadn't even thought about the brick. Oh, my gosh, that is an ugly thing. Someone said to me that it looked like a prison or something. I think we need to be a little bit creative.

Mr. Lang: The process that we go through with our architectural design is not just that we pick brick. We actually work through the process that exists at the City. We go to the Design Review Committee – two members are sitting here – we discuss the proposed product type, the materials that are going to be used and we get their input. If they don't like it, we come back and change it. It's not that we throw up whatever we want. We go through a process that is ordained by your group, it's dictated by your group that we go to before we get to you. So, if you have an issue with the products that we are going to pick, we should actually be talking to the people that sit on that committee because they are the ones that direct it. I don't direct that I'm going to put up brick everywhere.

We actually had a committee review today about another project we are looking where we have brick and we have stucco or siding. If you are going to build a commercial building on Main Street, what material are you going to use? That is a question. What are you going to use, brick, stone, stucco or do you want to put siding up? So, what else is there? I understand the concern that we are using red brick, but red brick is typical to a smaller town, especially a town that is a university town. I could put up a metal building with glass in it and you guys would go, what are you doing, that is the craziest looking building, especially when I am supposed to mimic the buildings that surround it. This building is all brick. That building is all brick. You guys tell me it is supposed to look like all the other buildings, set it back like the other buildings, but now you tell me, don't make it brick. What do you want me to make it?

The other concern you talked about was Jim Lisa. We did a property search on this whole thing, and I do know Jim. I grew up with him and grew up with his brother, and if I had known he owned the property I would have called him. In reality, we did a search before he bought the property. He knows that he bought a property directly adjacent to a BB zoned property that has the capability of a 35 foot building. And, there is an existing building on the site, which he knew before he bought it because he owns properties all around town. It was attempted to be approved three years ago for a three story building. It had too much density as far as apartment use. That building by right could be developed into a 35 foot building. If I came in with a commercial building, I wouldn't even need a variance. That is something Roy can comment on. When you buy a house directly adjacent to an existing commercial building that you know because you are a property owner is BB and can be developed with a 35 foot building, I understand that. If you are talking about people that were harmed by buildings that were built, we own the building directly adjacent to the Washington House. Do you think (inaudible) 35 foot or 40 foot building next to him. I have like an aircraft carrier sitting next to our building and we owned our house back there and we own the other house on Delaware Avenue. You guys approved a 70 foot building next to my little 28 foot house that is getting dwarfed . . . talk about the inability to get light on my house. I could come in here and argue that.

There are some legitimate concerns as far as your perspective on my design, but I go through a process to get to my design. I could have proposed a three story building with 20 apartments. The parking waiver could have been less, it wouldn't have as much of an impact on Dr. Cox and the adjoining other businesses, but after we started talking with Mid Atlantic Ballet, one of the concerns they had is long-term viability in downtown. Yes, I agree, it is not great to have a dance studio above someone else, but they are going to have a dance performance area potentially above their existing space. We thought about that. We didn't say, oh we are just going to move it to the second floor and try to lease the first floor to some other guys. So, we think about that kind of thing when we go through our process.

To get to your tree on Center Street, yes, that is more of a design concern from an engineering perspective. Can we rework the way that entrance works and keep that tree? I love trees. I am down at Twin Lakes, a big project we did, and I am arguing with the Public Works people because they want to cut the trees down because the stormwater management basin is supposed to be bigger. We spent a ton of time saving huge trees out there. I would love to save that tree on Center Street, but the Center Street orientation is more a direction from how (inaudible). If we are going to lose three spaces and save the tree, hey, that is something that is reasonable to do, and as it relates to 102, yes we are going to put landscaping in the front of that building. The approval process was associated with when the tenant moves into that building who is going to occupy the first floor, we need to have landscaping associated with that patio. So, instead of chopping a hole in that patio, we are going to have approved plan that is reviewed by Parks and Recreation and the Public Works Department.

Mr. Chris Locke: Lang Development. I just want to speak on a couple of things. You talked about setbacks, 12 foot setbacks and how it would balance the two other buildings. I am a retailer. I don't know if there are any other retailers here. I have been a retailer on Main Street since 1989. I have been in business for 37 years. The most important thing as a retailer on Main Street is to get as close as possible to Main Street. If you look at the

retailers who have been consistently here on Main Street, there is Grassroots, the 5 & 10, the new Starbucks that moved in the last five years, Crystal Concepts, Citizens Bank, these are people who want to be as close as possible to Main Street so they can use their windows to advertise and promote their products. You say, let's move that 12 feet so we can get a nice little area so we can have a restaurant come in so they can have outside dining. Now, I have been here a long time and every time we come up with a restaurant, all we hear about is another restaurant that is going to serve liquor. Now we have a building that is made ideally for a retailer and we are going to say let's change it and move it back 12 feet for a restaurant. I think you need to take that into consideration when you are talking about this 12 foot setback.

Mr. Lisa is a very experienced real estate person here in the City, and his comments are a little puzzling because when you buy a piece of property in the City of Newark, you have to go up to the Planning Department and you have to get what is called a City Affidavit. It is mandated. You can't close on the property until you get this City Affidavit. What happens is when you go up for the City Affidavit a person shows you a map and says here are the adjoining properties. Here is what the zone is and here is what can be built. So, he knew what he was doing when he was buying in September. (inaudible). He is happy about this project because he knows that he is going to come back at some point and say Center Street needs what I asked for a year and a half ago. He is still annoyed that that happened to him. That is what that was all about.

The last thing, "Lang Land:" what has Mr. Lang done all these years. Let's look at some of the projects he has done. The Agway property, he changed it to Pomeroy Station which has commercial space which has made Main Street more vibrant. Newark Farm and Home, he kept the old structure to keep the historical integrity of the building. He did that at great expense, over \$250,000. He redid the old NVF Plant that stood vacant for about 20 to 30 years, and he redesigned it where you have Timothy's Restaurant, you have the office back there, that's unbelievable. We recently did the Grainery Station which was not the most attractive building on Elkton Road which has now begun a whole renaissance of development on Elkton Road.

Mr. Bowman: I am going to pull you up short. I appreciate your comments, but I think we have said everything that is relevant to the project at hand. Thank you for your comments.

Mr. Charma: I would like to comment on the parking waiver. Table 3D on page 14 of the August 2006 Parking Study commissioned by the City of Newark and was done by Desman Associates an independent consultant indicated that a surplus of 67 spaces was available in Lots #3 and #4 based on full capacity vs. peak occupancy. So, if you take those 67 spaces plus the eight new spaces, that is 75 spaces. This proposal is talking about 70 spaces. So, in my mind, the parking is there. It is physically there.

Mr. Bowman: It is back to the Commission. The Chair will entertain a motion.

Mr. Begleiter: This is a really a once in a lifetime opportunity to shape a very central portion of Main Street. We are not going to have the opportunity to decide what happens in this block of Main Street again for many, many decades. All the properties surrounding this one are now developed or in the process of being redeveloped. Across the street is the same case. The Academy Building is not going to change. Washington House is not going to change. The building next to it is new. On this side of the street the Post Office is not going to change. 104 E. Main Street is not going to change. The Wilmington Trust Building and Dr. Cox's house are not going to change. So, this is a key property in a historic location in a central piece of Main Street. We have to take into consideration the historic nature of that block on Main Street. I have put in that category the developer's desire to reuse four columns in one of the ugliest buildings on Main Street. Yes, I agree that it would be more problematic to have to replace those four columns. There is no question about it. Replacing old columns with new ones is more problematic, but they don't support anything above the first level now, nothing. If you replace those four columns with four new ones, you can put anything you want on top of them at whatever distance setback from the street you want. The Newark Design Committee does not require the buildings be five feet from the curb. Buildings five feet

from the curb are recommended just as buildings in consort with their adjacent buildings are recommended. So, I am going to propose the following motion with suggested amendments to the Commission.

MOTION BY BEGLEITER, SECONDED BY DRESSEL THAT CITY COUNCIL TAKES THE FOLLOWING ACTIONS:

- A. APPROVE THE 108 E. MAIN STREET PARKING WAIVER REQUEST, WITH THE CONDITION THAT CONDOMINIUM AREA #3 AND TAX PARCEL 18-020.00.039 SHOWN ON THE LANDMARK ENGINEERING PLAN, DATED DECEMBER 18, 2008, BE DEDICATED TO THE CITY UPON THE ISSUANCE OF THE FIRST CERTIFICATE OF OCCUPANCY AT THE SITE.
- B. RECOMMEND THAT COUNCIL APPROVE THE 108 E. MAIN STREET MAJOR SUBDIVISION PLAN AND SPECIAL USE PERMIT FOR APARTMENTS IN THE BB DISTRICT, AS SHOWN ON THE LANDMARK ENGINEERING PLAN, DATED DECEMBER 18, 2008, WITH THE CONDITIONS IN THE PLANNING AND DEVELOPMENT DEPARTMENT REPORT AND WITH THE ADDITIONAL CONDITIONS THAT:
  - 1. THE PARKING LOT #3 ACCESS ON CENTER STREET BE LIMITED TO AN ENTRANCE ONLY;
  - 2. THE APPLICANT AND THE CITY TAKE AFFIRMATIVE MEASURES TO PRESERVE THE OAK TREE ON THE CENTER STREET PARCEL;
  - 3. THE APPLICANT RELOCATE THE BUILDING'S PROPOSED MAIN STREET FAÇADE SO THAT IT IS ALIGNED WITH THE AVERAGE SETBACK OF THE FAÇADE OF THE BUILDING AT 102 E. MAIN STREET;
  - 4. THE APPLICANT TAKE AFFIRMATIVE STEPS TO MAINTAIN THE TENANCY OF THE MID-ATLANTIC BALLET IN THE 108 E. MAIN STREET BUILDING.

Mr. Bowman: Is there any further discussion?

Mr. Osborne: Mr. Chairman. I support the proposed amendments. If I might suggest that in addition to those amendments we might also put some wording in to add an amendment to maybe incorporate some of the comments we heard about rounding and soften some of the corners.

Mr. Bowman: I think the builder heard that. I don't think we need another amendment to do that necessarily.

Mr. Lopata: The problem is, that is a little vague. He has heard it, but I would certainly suggest that in his revised plan, as we move forward, take into account the comments we have heard this evening from an architectural standpoint.

Mr. Bowman: We have had a second to the motion, with the amendments. Is there any further discussion?

Ms. Dressel: I would like to suggest to the Design Committee that we would like to see some different facades and I don't know where we should be making that suggestion.

Mr. Lopata: They are actually very much interested in that, but I don't want to go off on a tangent here, because it is late, but I just want to make sure you understand that the University of Delaware is considered one of the most beautiful campuses in the United States and, of course, the campus is dominated by red-brick.

Ms. Dressel: Yes, but it has lots of white and lots of trim and things like that, and I think that is what is missing from the last several projects.

Mr. Bowman: It is certainly pertinent to this discussion but outside of this motion.

VOTE: 7-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, OSBORNE,  
SHEEDY

NAY: NONE

MOTION PASSED UNANIMOUSLY

There being no further business, the meeting adjourned at 10:15 p.m.

Respectfully Submitted,

Elizabeth Dowell  
Secretary, Planning Commission